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APPENDIX

Supreme Court, U.S.
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Supreme Court of the United States

TERM, 1971

No. 70-5064

RUTH J. JEFFERSON, ET AL.,
Appellants,

—v.—

BURTON G. HACKNEY, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT FILED FEBRUARY 4, 1971
JURISDICTION NOTED OCTOBER 12, 1971

Supreme Court of the United States

TERM, 1971

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INDEX

	Page
Entire Docket Sheet	1
Complaint	15
Defendants' Answer	29
Amended Complaint	35
Defendants' Amended Answer	49
Defendants' Answers to Supplemental Written Interrogatories with Exhibits A, B, C, & D	57
Order of Consolidation	63
Stipulation of Facts	64
E-Letter 417	90
E-Letter 430	94

	Page
E-Letter 434	107
Judgment	109
Opinion	112
Order Amending Judgment	155
Order Denying Plaintiffs Motion of 9/19/69 to Amend Judgment of this Court of July 1, 1969, as amended August 7, 1969	156
Plaintiffs' Notice of Appeal	157
Opinion of Supreme Court	158
Judgment from Supreme Court	159
Judgment	160
Motion to Amend Judgment	163
Order Overruling Motion to Amend Judgment	170
Plaintiffs' Notice of Appeal	171
Order of Supreme Court of the United States granting motion of the appellants for leave to proceed in forma pauperis	172
Order of the Supreme Court of the United States noting probable jurisdiction	172

CIVIL DOCKET

UNITED STATES DISTRICT COURT

CA-3-3012-B

Requests 3-Judge Court
Judge Hughes, Judge Goldberg & Judge Taylor

Jury demand date:

RUTH J. JEFFERSON, EMMA GIPSON, and JOSE APOLINOR VASQUEZ, Individually, on Behalf of Their Minor Children and on Behalf of All Others Similarly Situated.

vs

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare; WILL BOND, Chairman of the State Board of Public Welfare; W. KENDALL BAKER, Vice Chairman of the State Board of Public Welfare; LOUIS SARAZAN, Secretary of the State Board of Public Welfare; ROSALIND GILES, Director of Field Staff, Dallas Regional Office of the State Department of Public Welfare; Individually and in Their Official Capacities

For plaintiff:

Ed J. Polk and David J. Candish—RI 2-1631
Dallas Legal Services Project
301 N. Market Street
Dallas, Texas 75202

Douglas R. Larson—RI 7-2224
408 N. St. Paul
Dallas

Carl Rachlin
164 Madison Ave., New York

Edward Sparer
Yale University, School of Law
New Haven, Conn.

Douglas Larson—747-2224
980 Hartford Bldg.

For defendant:

Pat Bailey and W. O. Shultz, Asst. Atty. General
Capitol Station
Austin, Texas 78711

Statistical Record	Costs	Date
J.S. 5 mailed 2-28-69 reopened June, 1970	Clerk	in forma pauperis
J.S. mailed JUL. 31, 1969	Marshal	
AUG. 31, 1970	Docket fee	
Basis of Action: CLASS ACTION.	Witness fees	
	Depositions	

Alleges discrimination in reduction of State Welfare Aid, and that State provisions are contrary to the U.S. Social Security Act. Seeks THREE-JUDGE COURT; that certain Articles of State Constitution be declared null & void; remittance of funds denied; perm. & temp. injunction.
State Welfare cks

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb. 12	Filed MOTION with attachments FOR LEAVE TO PROCEED IN FORMA PAUPERIS, and Filed ORDER GRANTING LEAVE TO SUE IN FORMA PAUPERIS. STH
Feb. 12	Filed COMPLAINT.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb. 12	Filed APPLICATION FOR CONVENING OF THREE JUDGE DISTRICT COURT.
Feb. 12	Issued Summons (5).
Feb. 12	Filed MOTION FOR TEMPORARY RESTRAINING ORDER.
Feb. 12	Filed NOTICE signed by STH addressed to Hon. John R. Brown requesting designation of two Judges.
	(Law Clerk stated that Judge Hughes sent copy of Notice to Judge Brown)
Feb. 17	Filed RETURN ON SUMMONS executed Feb. 13, 1969 by serving Rosalind Giles in person. (MD-18641)
Feb. 20	Filed RETURN ON SUMMONS executed Feb. 17, 1969 by serving Burton G. Hackney, Austin, Tex. (MD-18641)
Feb. 19	Filed ORDER from Circuit Court designating Judge Goldberg and Judge Taylor to sit with Judge Hughes on this action JRF.
Feb. 19	Filed plaintiffs REQUESTS FOR ADMISSION under Rule 36.
Feb. 19	Filed plaintiffs MOTION for leave to serve request for admissions.
Feb. 19	Filed TEMPORARY INJUNCTION. STH.
Feb. 19	Issued 5 writs to serve temporary injunction & given to U.S. Marshal.
Feb. 20	Filed ORDER granting plaintiff's motion for leave to serve request for admissions. STH.
Feb. 24	Filed RETURN ON SUMMONS executed Feb. 17, 1969 by serving W. Kendall Baker in person, Houston, Tex. (MD-18641)

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb. 24	Filed RETURN ON SUMMONS AND TEMP. INJUNCTION executed Feb. 20, 1969 by serving Louis Sarazan by delivering to Fern Noblitt, Sec.
Feb. 28	Filed MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND A PRELIMINARY AND PERMANENT INJUNCTION.
Mar. 3	Filed defendants ANSWERS to REQUEST FOR ADMISSION. (Rec'd only 3 sets of exhibits and they were given to the 3 judges)
Mar. 5	Filed RETURN ON WRIT TO SERVE TEMP. INJUNCTION executed February 24, 1969, by serving W. Kendall Baker in person
March 6	Filed defendants ANSWER.
March 6	Filed WRITTEN INTERROGATORIES to Defendants.
March 6	Filed Plaintiffs' MOTION TO SHORTEN TIME TO ANSWER INTERROGATORIES.
Mar. 10	Filed RETURN ON SUMMONS and 2 TEMP. INJUNCTIONS executed Feb. 20-26th, 1969 by serving Will Bond, Hillsboro, Texas; and by serving Burton G. Hackney in person, Austin, Tex.
Mar. 10	Filed Defendants' ANSWER TO PLAINTIFFS' MOTION TO SHORTEN TIME TO ANSWER INTERROGATORIES.
Mar. 14	Filed plaintiff's MOTION FOR CONTINUANCE until April 7, 1969.
Mar. 14	Filed ORDER granting motion for continuance until a later date. STH.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Mar. 14	Filed ORDER dissolving Temporary Restraining Order of Feb. 19, 1969. STH.
Mar. 14	Filed ORDER concerning Defendants' Answers to Interrogatories. STH
Mar. 17	Notified attorneys of entry of Order dissolving Temporary Restraining Order and of Order concerning Defts' Answers to Interrogatories.
Mar. 17	Filed Defendants' NOTICE OF HEARING OBJECTIONS TO INTERROGATORIES and attached OBJECTION TO WRITTEN INTERROGATORIES.
Mar. 21	Filed Deft's ANSWERS TO PLTFS' WRITTEN INTERROGATORIES (with attached exhibits)
Apr. 7	Filed Plaintiffs' MOTION TO ADVANCE HEARING ON THE MERITS.
Apr. 7	Filed MOTION FOR LEAVE TO FILE AMENDED COMPLAINT.
April 8	Filed Plaintiffs' SUPPLEMENTAL WRITTEN INTERROGATORIES.
April 8	Filed Plaintiffs' SUPPLEMENTAL REQUEST FOR ADMISSIONS UNDER R. 36.
April 8	Filed ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT. STH
April 8	Filed AMENDED COMPLAINT (detached it from Motion for Leave to File)
April 9	Notice of Order mailed to Pat Bailey, Asst. Attorney General.
Apr. 15	Filed Pltf's MOTION TO RECONSIDER ORDER DISSOLVING TEMPORARY INJUNCTION.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Apr. 17	Filed Defendants' OBJECTIONS TO SUPPLEMENTAL WRITTEN INTERROGATORIES.
Apr. 17	Filed Defendants' OBJECTIONS TO SUPPLEMENTAL REQUEST FOR ADMISSIONS.
Apr. 18	Filed Plaintiffs' MOTION FOR ORDER COMPELLING DEFENDANTS TO ANSWER INTERROGATORIES.
Apr. 16	Filed DEFENDANTS' ANSWERS TO PLAINTIFFS' WRITTEN INTERROGATORIES. (Two large boxes of exhibits in supply room)
Apr. 21	Filed plaintiff's SUPPLEMENTARY WRITTEN INTERROGATORY.
Apr. 21	Filed defendants AMENDED ANSWER.
Apr. 21	Filed defendants ANSWER to plaintiffs motion to reconsider order dissolving temporary injunction.
Apr. 21	Filed defendants answer to plaintiffs motion for order compelling defendants to answer interrogatories.
Apr. 28	Filed defendants MOTION TO CONSOLIDATE.
Apr. 30	Filed defendant's SUPPLEMENTAL answer to plaintiff's motion for order compelling defendants to answer interrogatories.
Apr. 30	Filed defendants ANSWER to plaintiff's SUPPLEMENTAL REQUEST FOR ADMISSIONS.
Apr. 30	Filed defendants ANSWER to plaintiff's SUPPLEMENTAL WRITTEN INTERROGATORY.
Apr. 30	Filed plaintiff's MOTION in opposition to defendants motion to consolidate.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
May 1	Filed RETURN ON WRIT TO SERVE TEMPORARY INJUNCTION executed Feb. 19, 1969 by serving Rosalind Giles in person at the County Courthouse.
Apr. 30	Filed defendants ANSWERS to supplemental written interrogatories.
May 2	Filed ORDER OF CONSOLIDATION. CA 3-3126 transferred from San Antonio Division, their SA69CA76 and consolidated with this cause. STH.
May 2	Filed ORDER overruling plaintiff's motion to reconsider order dissolving temporary injunction. STH.
May 19	Filed PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES.
May 21	Filed letter from David J. Candish requesting to be listed as one of the attorneys of record for the plaintiff.
May 22	Filed Defendants' MOTION FOR EXTENSION OF TIME FOR FILING OF BRIEF AND CONTINUANCE OF TENTATIVE PRE-TRIAL HEARING AND TRIAL DATE.
May 29	Filed Pltf's MOTION IN OPPOSITION TO DEFTS' MOTION FOR CONTINUANCE OF TRIAL DATE.
June 2	Filed DEPOSITION OF Jerome D. Chapman, Jr.
June 3	Filed DEPOSITION of Margaret Gregg.
June 3	Filed Deposition of Will W. Bond
June 3	Filed DEPOSITION OF GUSTAVO M. RAMOS AND ROSALIND GILES

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
June 3	Filed DEPOSITION OF LOUIS ROOSEVELT SARAZAN
June 4	Filed BRIEF of Robert H. Finch, Sec. of HEW as Amicus Curiae with attached exhibits A, B, C, D, E.
June 9	Filed TRIAL BRIEF of plaintiffs Devila and Gutierrez. (CA 3-3126)
June 12	Filed RETURN ON SUBPOENA DUCES TECUM executed May 29, 1969 by serving James West in person.
June 12	Filed RETURN ON SUBPOENAS (3) all executed May 28, 1969 by serving Burton G. Hackney; Margaret Gregg; and Jerome Chapman.
June 12	Filed DEPOSITION OF BURTON G. HACKNEY
June 12	Filed DEPOSITION of Jose Apolinor Vasquez.
June 12	Filed DEPOSITION of Emma Gipson
June 12	Filed DEPOSITION of Ruth Jannell Jefferson.
June 13	Filed RETURN ON SUBPOENA executed June 11, 1969 by serving Glynn Coker in person.
June 13	Filed RETURN ON SUBPOENA DUCES TECUM executed June 10, 1969 by serving James West in person.
June 12	Filed TRIAL BRIEF OF DEFENDANTS.
June 12	Filed STIPULATION OF FACT.
June 12	Filed Defendants' MOTION TO STRIKE PLAINTIFF, RUTH J. JEFFERSON, AS A PARTY.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
June 23	Filed RETURN ON SUBPOENAS (3) all executed June 10, 1969 by serving Margaret Gregg, Austin, Tex; by serving Jerome Chapman, Austin, Tex; and by serving Burton Hackney, Austin, Tex.
June 24	Filed letter from Ed J. Polk addressed to Judge Hughes with attached copies of Summary Judgment and Order entered by Judge Jack B. Weinstein, U. S. District Court, Eastern District of New York, in 69-Civ-355. (Copies were carried by Ed Polk to the Judges)
June 23	Filed NOTICE to take depositions of John Clack & Tom Day.
June 24	Issued deposition subpoenas to John Clack & Tom Day.
June 30	Filed DEPOSITION OF MR. J. B. CLACK.
July 1	Filed JUDGMENT, defendant's motion to dismiss Ruth Jefferson as a party plaintiff is OVERRULED. Payment made by State of Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to the other three programs is not in violation of the Equal Protection Clause of the 14th Amendment, also payment of a lesser percentage is not the result of racial or ethnic prejudice and not in violation of the Federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment, also is not the result of racial or ethnic discrimination. Statewide plan known as E-430 & 434 violates the requirements established by Congressional Amendment 42 U.S.C.A. 402(a) (23) to the AFDC program and is null & void. Defendants are perma-

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
	nently enjoined from enforcing Texas Plan E-430 & E-434 and from receiving funds from the Federal Government until a plan is formulated which carries out the provisions of 42 U.S.C.A. 402(a)(23). This injunction is stayed for 60 days to give the Texas Legislature an opportunity to implement a plan which will conform to the requirements of 42 U.S.C.A. 402(a)(23). (ILG; STH; WMT.)
	Copy of judgment given to attorneys of record in courtroom
July 1	Filed RETURN ON SUBPOENA executed June 30, 1969 by serving Anne Cappleman.
July 1	Filed RETURN ON SUBPOENA DUCES TECUM executed June 30, 1969 by serving Rosalind Giles.
July 8	Filed Plaintiffs' MOTION TO AMEND JUDGMENT.
*July 7	Filed RETURN ON SUBPOENAS DUCES TECUM (2) executed June 30, 1969 by serving John Clack and Tom Day both in person.
July 16	Filed DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION TO AMEND JUDGMENT
July 17	Filed MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE COLUMBIA CENTER ON SOCIAL WELFARE POLICY & LAW.
July 30	Filed Deft's NOTICE OF APPEAL TO THE SUPREME COURT OF THE U.S.
July 31	Filed OPINION of the Three Judge Court STH, WMT, IRG.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Aug. 1	Filed TRANSCRIPT OF PROCEEDINGS.
Aug. 5	Filed Pltf's NOTICE OF CROSS-APPEAL TO THE SUPREME COURT.
Aug. 13	Filed plaintiffs MEMORANDUM OF LAW supporting the jurisdiction of this court to grant motion to amend judgment.
Aug. 14	Filed defendant's MEMORANDUM BRIEF on Court's jurisdiction to hear motion to amend judgment.
Aug. 14	Filed Corrected Title Sheet on Transcript of Proceedings.
Aug. 14	Filed ORDER amending paragraph 5 of the judgment entered July 1, 1969 which reads as follows: Defendants are permanently enjoined from enforcing Texas Plan E-430 & E-434 providing for payments to recipients of AFDC & are directed, so long as the State has not withdrawn from the program, to formulate & implement a plan which carries out the provisions of 42 U.S.C.A. 402(a)(23). STH; ILG; WMT.
Sept. 10	Filed APPELLATE RECORD STIPULATION & AGREEMENT.
Sept. 17	Filed defendants MOTION TO DISMISS APPEAL. (Hearing set 9-19-69 2:30 P.M.)
Sept. 17	Filed defendants MOTION to assess cost of appeal against plaintiffs. (Hearing set 9-19-69 2:30 P.M.)
Sept. 19	Filed TRANSCRIPT OF PROCEEDINGS of hearings held on Aug. 7, 1969

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Sept. 19	Filed Pltf's RESPONSE TO DEFTS' MOTION TO DISMISS APPEAL AND TO DEFTS' MOTION TO ASSESS COST OF APPEAL AGAINST PLAINTIFFS.
Sept. 19	Filed Pltf's MOTION TO COMPEL DEFTS' TO COMPLY WITH JUDGMENT AS AMENDED ON AUGUST 7, 1969.
Sept. 19	Filed Pltf's MOTION TO AMEND JUDGMENT.
Sept. 23	Filed NOTICE BY PLAINTIFFS-APPELLEES AND CROSS-APPELLANTS TO THEIR INTENTION TO PERFECT AND PROSECUTE APPEAL.
Sept. 25	Mailed Original case papers with Transcripts (2) and exhibits to the Supreme Court, Wash., D. C. Pltf's Exhibits 1, 2, 3, 5, 6, 7, 8 and 9
	* * * * *
Sept. 26	Filed ORDER denying Pltfs' Motion of 9-19-69 to Amend Judgment of this court of July 1, 1969 as amended Aug. 7, 1969. ILG; STH; WMT.
	(attorneys notified) by copy
Sept. 30	Filed Pltf's MOTION TO RECONSIDER, UPON HEARING, THE COURT'S DENIAL OF PLTF'S MOTION TO AMEND JUDGMENT
Oct. 2	Filed Pltf's MOTION TO WITHDRAW MOTION.
Oct. 2	Filed ORDER that the Plaintiffs Motion to Reconsider, Upon Hearing, the Court's Denial of Plaintiff's Motion to Amend Judgment is hereby withdrawn by the Court from any consideration. ILG; STH; WMT
	(all attorneys notified by copy) -7-

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Oct. 3	Filed ORDER that defendants' Appeal is hereby dismissed and that the Cross-Appeal of Plaintiffs DAVILA AND GUTIERREZ, et al is hereby dismissed and appellate cost thus far are hereby assessed against Plaintiffs JEFFERSON, GIPSON & APOLINOR, et al., who wish to continue with their Cross-Appeal. ILG; STH; WMT (all attorneys notified by copy (7)-)
Oct. 3	Filed Pltfs' NOTICE OF APPEAL—as to the Judgment of July 1, 1969 as amended August 14, 1969 and from the Court's Denial of Pltfs' Motion to further amend the Judgment so as to allow for retroactive payments dated Sept. 26, 1969.
Oct. 29	Mailed Supplemental Record to Supreme Court
	* * * *
Nov. 20	Filed RETURN ON DEPOSITION SUBPOENAS (2) both executed June 24, 1969 by serving Tom Day at Verdergriff's Chevrolet Co. and by serving John Clack at Vandergriff's Chevrolet Co. (MD-18641)
1970	
May 6	Filed OPINION from Supreme Court: "The motion for leave of proceed in forma pauperis granted. The judgment is vacated and the case is remanded back for further consideration (in light of Rasado vs. Wyman, 397 U.S. 397.)"
June 5	Filed certified copy of judgment from Supreme Court: Vacated and Remanded back to this court (case reopened)
	Filed certified copy of Order Granting Leave to proceed in Forma Pauperis. (from Supreme Court)

CIVIL DOCKET

DATE	PROCEEDINGS
1970	
July 6	Filed defts' MOTION FOR JUDGMENT
July 30	Filed PROPOSED JUDGMENT.
Aug. 4	Filed JUDGMENT vacating judgment entered 7-1-69 and thereafter amend 8-7-69 & entered 8-14-69. Defendants motion to dismiss Ruth Jefferson is overruled. The payments of less than 100% to AFDC is not violative to the Equal Protection Clause, the Civil Rights Act or Equal Protection clause of the 14th Amendment and is not the result of racial or ethnic discrimination. The Texas state wide plan E-434 is in conformity with the U.S. Supreme Court in Rosado, et al vs. Wyman, et al decided 4-6-70. The injunctive relief sought by plaintiffs is denied. ILG: STH: WMT.
	Copies mailed to Ed Polk, Dallas Legal Services and Pat Bailey, Asst. Attorney General, Austin, Texas.
Aug. 14	Filed Plaintiffs' MOTION TO AMEND JUDGMENT.
Sept. 15	Filed defts MEMORANDUM in opposition to plf's motion to amend judgment.
Sept. 25	Filed ORDER Overruling Motion to Amend Judgment ILG; STH; WMT.
Oct. 26	Filed Pltfs' NOTICE OF APPEAL from the Judgment of Aug. 4, 1970, and from the Court's denial of Pltf's Motion to Amend Judgment. (a copy of Notice to each of the 3 judges.)
Nov. 18	Mailed cases papers (7) to the SUPREME COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA 3-3012-B

RUTH J. JEFFERSON, EMMA GIPSON, and JOSE APOLINOR VASQUEZ, Individually, on Behalf of Their Minor Children and on Behalf of All Others Similarly Situated, PLAINTIFFS

vs.

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare; WILL BOND, Chairman of the State Board of Public Welfare; W. KENDALL BAKER, Vice Chairman of the State Board of Public Welfare; LOUIS SARAZAN, Secretary of the State Board of Public Welfare; ROSALIND GILES, Director of Field Staff, Dallas Regional Office of the State Department of Public Welfare; Individually and in Their Official Capacities, DEFENDANTS

COMPLAINT—Filed: Feb. 12, 1969

I

STATEMENT

1. This is an action for a declaratory judgment and for a temporary restraining order, and for preliminary and permanent injunctive relief under Title 42, U.S.C., Sections 1983 and 1988 to enforce within the State of Texas guarantees of the Fourteenth Amendment to the United States Constitution and of the Federal Social Security Act, Title 42, U.S.C. Section 301 *et seq.* and more particularly Section 601 *et seq.* The Plaintiffs seek to restrain Defendants from applying, enforcing, executing and implementing Article 3 of the Texas Constitution Section 51a. Title 20A, Article 695(c), Seeton 18 of the Public Welfare Act (of Texas) of 1941 V.A.T.S.,

as amended, and the statewide order of Burton G. Hackney, Commissioner of the State Department of Public Welfare, dated July 26, 1968, and more precisely identified as Executive Letter Number E-417, insofar as such provisions, statutes and statewide orders permit and necessitate the reduction of grants to recipients of Aid to Families with Dependent Children (A.F.D.C.) below grant levels existing on and prior to January 2, 1968, without regard to the needs of such recipients and increases in the costs of living, and insofar as such provisions, statutes and statewide orders reduce rather than increase grants to such recipients after July 1, 1969, regardless of the increase in costs of living since the standards and maximums for such grants were previously established, and insofar as such provisions, statutes and statewide orders require lower grants to such recipients than are provided to recipients of other public assistance programs established under the federal Social Security Act without regard to the equal or greater needs of recipients of Aid to Families with Dependent Children.

II.

JURISDICTION

Jurisdiction is based upon:

(a) The Fourteenth Amendment to the United States Constitution;

(b) Title 42 United States Code, Chap. VII, Section 301, *et seq.* and more particularly Section 601 *et seq.*;

(c) Title 28, United States Code, Section 1331, and the amount in controversy exceeds $10,000.00, exclusive of interest and costs;

(d) Title 28, United States Code, Section 1343(3) and (4), 2201, 2202, 2281 and 2284;

(e) Title 42, United States Code, Section 1983 and 1988.

III. (A),

PLAINTIFFS

1. (a) Plaintiff, RUTH JEFFERSON, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and has resided in Texas continuously since 1939. She is the mother and sole support of the Plaintiff children, to wit: TONY JEFFERSON, born May 29, 1956; EULA JEFFERSON, born May 3, 1957, ARTHUR P. JEFFERSON, born June 1, 1958; and YOLANDA JEFFERSON, born June 5, 1959; and JACQUELINE JEFFERSON, born July 20, 1960; all of whom live with her at her place of residence. Plaintiff RUTH JEFFERSON was divorced on December 2, 1967, from her husband and the father of the above named Plaintiff children. Although a court decree orders her ex-husband to pay child support, he is Fourteen Hundred and Ten Dollars ($1,410.00) in arrears and the last payment received by Plaintiff RUTH JEFFERSON for said Plaintiff children was May 6, 1968. Plaintiff RUTH JEFFERSON and her children have no income, resources, support or maintenance other than the One Hundred and Twenty-Three Dollars ($123.00) per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. Plaintiff JEFFERSON is a Negro.

(b) Plaintiff, EMMA GIPSON, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. She is the sole support for three minor children, to wit: JAMES E. GIPSON, born October 23, 1963; DONALD R. GIPSON, born April 3, 1965; and ANTHONY D. GIPSON, born February 23, 1967, all of whom live with her at her place of residence, EMMA GIPSON and her children have no income, resources, support or maintenance other than the One Hundred and Two Dollars ($102.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department. Plaintiff GIPSON is a Negro.

(c) Plaintiff JOSE APOLINOR VASQUEZ, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. He and his wife are the parents and sole support of the Plaintiff children, to wit: MARGIE VASQUEZ, born November 2, 1952; PAULINE VASQUEZ, born January 15, 1954; FRANCES VASQUEZ, born February 26, 1955; JOSEPHINE and PATRICIA VASQUEZ (twins), born August 22, 1956; MARIO VASQUEZ, born August 22, 1957; and APOLINOR and CARMEN VASQUEZ (twins), born September 1, 1958. Plaintiff JOSE APOLINOR VASQUEZ, is unemployed and too disabled to work due to a broken neck suffered in an automobile accident. His employment prior to the accident was that of a migrant farm worker. He has been unsuccessful in his attempts to collect social security disability benefits. His wife, though employed, is unable to work regularly because of her health, having suffered a heart attack in 1957, with continuing concomitant health problems to the present. Even when Mrs. Vasquez works full time her earnings are insufficient to pay the cost of food for the family. Except for the sporadic income of Mrs. Vasquez, Plaintiff JOSE APOLINOR VASQUEZ and his eight (8) children have no income, resources, support or maintenance other than the One Hundred and Thirteen Dollars ($113.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department. Plaintiff VASQUEZ is a Mexican-American.

2. The Plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of all persons receiving Aid to Families with Dependent Children (A.F.D.C.) grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas. The members of the class are so numerous as to make joinder of all members before this court impossible and impracticable. Common relief is sought against Defendants' action directed at the class as a whole. The

interest of the class will be adequately represented by the named Plaintiffs.

III.(B)

DEFENDANTS

1. Defendant, BURTON G. HACKNEY, is Commissioner of the State Department of Public Welfare. Pursuant to Vernon's Annotated Civil States, Article 695(c), Section 33 of the Texas Statutes, he has the right, power and duty to exercise any right, power and duty conferred on the State Department of Public Welfare unless such right, power or duty is specifically delegated to the duly appointed agents or employees of the Department. Under Article 695(c), Section 41 of the Texas Civil Statutes, the State Department shall administer aid to needy dependent children including the fixing of the amount of grants complained of herein. The State Department of Public Welfare consists of the State Board of Public Welfare, the Commissioner of Public Welfare, and their officers and employees. Vernon's Annotated Civil Statutes, Article 695(c), Section 21.

2. Defendant WILL BOND is Chairman of the State Board of Public Welfare, other members of the State Board are Defendants W. KENDALL BAKER, Vice-Chairman and LOUIS SARAZAN, Secretary. The Board is responsible for the adoption of all policies, rules and regulations for the government of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of. Vernon's Annotated Civil Statutes, Article 695(c), Section 32 of the State of Texas.

3. Defendant ROSALIND GILES is the Director of the Field Staff of the Dallas Regional Office of the State Department of Public Welfare. It is her responsibility under the statutes and regulations of the State Department of Public Welfare to implement the regulations of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of.

III. (C)

4. This suit requires the convening of a three-judge court in accordance with 28 U.S.C., Section 2281 and 2284, because Plaintiffs seek to enjoin the enforcement, operation and execution of a provision of the state constitution, a state statute, and of an order of statewide effect made by a state administrative board pursuant to said state constitution and said statute on the grounds of the unconstitutionality of such state constitutional provision, statute and administrative order.

IV.

STATEMENT OF CLAIM

1. Pursuant to the federal Social Security Act of 1935, as amended, Texas cooperates with and has filed a plan as required by said Act with the Department of Health, Education and Welfare of the Federal Government to grant assistance to needy blind persons (AB), to needy permanently and totally disabled persons (APTD), to needy old persons (OAA), and to needy families with dependent children (AFDC). Throughout the Federal Social Security Act, the statutory purpose that money will be allocated to such recipients entitled by law from aforesaid categories on the basis of need is made clear. As illustrative of this premise see Title 42 U.S.C., Section 302(a)(10)(A), ". . . (The State Plan shall) provide that the State agency shall, in determining need for such assistance . . ." See also 42 U.S.C., Section 602(a)(7), 1202(a)(8), and 1352(a)(8).

2. The major part of the monies paid in the form of grants to such needy persons are of federal origin, provided through the Department of Health, Education and Welfare. In return, the Social Security Act imposes a positive obligation upon the states cooperating under it to allocate welfare payments on the basis of need to all persons who are eligible under any one or more of the aforesaid categories of assistance.

3. In Texas, as in certain other states, substantially lower grants have been given, over a course of many

years, to A.F.D.C. recipients than have been given to recipients of other federally funded public assistance programs, despite the equal or greater need of the needy dependent children in the A.F.D.C. program. The particular devices used to effect this discrimination have been the "maximums" provided under state public welfare department statewide orders for A.F.D.C. recipients. For example, as of July 1, 1968, an A.F.D.C. mother with three (3) children could obtain only $114.00 per month in grant amount regardless of their need as calculated under standards set by the state public welfare department. An A.F.D.C. mother with twelve (12) children could obtain only $135.00 regardless of their need under such standards. In no other federally funded welfare program in Texas were such severe "maximums", totally unrelated to need, established.

4. Because of its concern with the A.F.D.C. program, including the excessively low standards of need and maxima in Texas certain other state A.F.D.C. programs, Congress in Section 213(b) of the 1967 amendments to the Social Security Act, signed into law on January 2, 1968, as P.L. 90-248 added a new requirement for state A.F.D.C. programs, Section 402(a)(23) (42 U.S.C. 602 (a)(23)), which provides that state A.F.D.C. plans must:

> provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted."

5. The purpose of requiring the increases in A.F.D.C. standards and grants "by July 1, 1969" rather than immediately was to allow time to study what the changes in cost of living have been and to allow for state legislatures to raise the extra appropriations needed to meet the state share of such increased grants.

6. Rather than so carry out the mandate of Congress, the Defendants, on the basis of the previously acted Texas constitutional provisions, statewide statute and

statewide administrative order, issued subsequent to the adoption by Congress of Section 402(a)(23) of the Act, have effected the opposite result. In violation of the Social Security Act, the Texas Constitution, Article 3, Section 51a, makes impossible any increased payments to be allocated to those A.F.D.C. recipients statutorily eligible on the basis of need and changes in the cost of living. Rather, such constitutional provision sets a maximum figure ($60,000,000) that may be appropriated by the State Legislature for welfare payments to be spent in a given year; Article 695(c) and 18 of the Texas Public Welfare Act further implements such provisions. The statewide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directs that from September 1, 1968, through August 31, 1969, all A.F.D.C. "maximums" shall be reduced by twelve dollars ($12.00), without regard to changes in the cost of living, standards of need or actual need, to wit: the maximum per month for a mother with one child is reduced from Seventy-Two Dollars to Sixty Dollars; for a mother with two children, from Ninety-Three Dollars to Eighty-One Dollars; for a mother with three children, from One Hundred and Fourteen Dollars to One Hundred and Two Dollars; for a mother with four or more children from One Hundred and Thirty-Five Dollars to One Hundred and Twenty Three Dollars.

7. That Plaintiffs and the members of their class have qualified under law as participants in such programs providing for benefits to families with dependent children. Their assistance has been cut in the following manner:

Plaintiff, RUTH JEFFERSON, mother of five (5) minor children, had her grant cut from One Hundred and Thirty Five Dollars ($135.00) to One Hundred and Twenty-Three Dollars ($123.00).

Plaintiff EMMA GIPSON, mother of three (3) minor children had her grant cut from One Hundred and Fourteen Dollars to One Hundred and Two Dollars ($114.00 to $102.00).

8. Beneficiaries receiving assistance under other programs provided for by law, such as aid to the needy

blind, aid to the permanently and totally disabled, aid to the aged, have not been so reduced as have been Plaintiffs.

9. That there is no legal, rational or reasonable basis for the discrimination between Plaintiffs, as beneficiaries of the Aid for Dependent Children program and beneficiaries of other programs referred to herein. That such unreasonable and arbitrary distinctions constitute a denial of equal protection of the law as required by the Fourteenth Amendment to the United States Constitution and cannot be justified in any reasonable manner.

10. That furthermore the reduction in assistance to families with dependent children is based on discrimination because of race in that families with dependent children in the State of Texas are in large part members of the Negro race or of Mexican-American origin, whereas beneficiaries under programs providing assistance to the blind, the permanently disabled, the aged are in substantial part members of the Caucasian race and of non-Mexican origin; that the arbitrary and unreasonable reduction in assistance, as referred to herein was so provided for as to discriminate against Plaintiffs and members of their class because of their race or ethnic origin and so constitutes a denial of equal protection of law as required by the Fourteenth Amendment.

11. That in addition, the reduction in assistance to the needy dependent children of the A.F.D.C. program, as distinguished from recipients of other programs, is further based upon invidious and arbitrary discriminations against them, as distinguished from other public assistance recipients, as a result of popular prejudice against children of unwed mothers. Said discrimination is made even though the A.F.D.C. program consists of both "legitimate" and "illegitimate" children. Such discrimination against "illegitimate" children and others constitutes a denial of the equal protection of law required by the Fourteenth Amendment.

12. That the fiscal year for the appropriations provided by the State of Texas for Public Assistance does not expire until August 31, 1969; that the State of Texas, already in violation of law as described above, will be

in further violation of law no later than July 1, 1969, unless the provisions of Article 3, Section 51a, of the Constitution of the State of Texas is declared in violation of Federal law, in violation of the plan filed by the State of Texas, required by law for it to receive federal funds for Public Assistance, and declared thereby inoperative and of no force and effect, and shall limit the right of the Legislature of the State of Texas to comply with the law, and appropriate sufficient funds of money so as not to deny a reasonable minimum standard of living for Plaintiffs and the members of their class.

13. Plaintiffs and members of their class believe, because of recent public statements by Defendants herein and by several elected state officials, that a further reduction in their A.F.D.C. grants is imminent and that that proposed reduction is justified by Defendants on the basis of Article 3 of the Texas Constitution, Section 51a, and Title 20A, Article 695(c), Section 18 of the Public Welfare Act (of Texas) of 1941, Vernon's Annotated Texas Statutes as amended; and that such reduction will be implemented by a statewide order of the Defendant, BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare, similar to Executive Letter No. E-417, issued July 26, 1968. Plaintiffs would show the Court that such a reduction of their A.F.D.C. grants by Defendants, if effected, will be unconstitutional, contrary to the terms and purposes of the United States Social Security Act and in violation of the Equal Protection clause of the Fourteenth Amendment. Plaintiffs would further show the Court that such proposed reduction would be in the amount of Twenty-Eight Dollars ($28.00) per month and that the threat of such a reduction represents immediate and irreparable harm to the Plaintiffs and that if effected they and members of their class represented by Plaintiffs and their minor children will die of hunger and malnutrition.

14. Plaintiffs and the members of their class will be further harmed and discriminated against in that in addition to receiving the aforesaid illegal reduction in assistance, they will not receive the increase required by federal law as referred to aforesaid.

V.

CAUSES OF ACTION

For A First Cause of Action: Plaintiffs allege that Article 3, Section 51a of the Constitution of the State of Texas denies Plaintiffs and all members of the class they represent equal protection of the law in that the members of the aforesaid class and Plaintiffs are arbitrarily and unreasonable discriminated against as compared with other beneficiaries of the programs of Public Assistance. That this discrimination is arbitrary and in violation of law and denies equal protection of the law as required by the United States Constitution.

For A Second Cause of Action: Plaintiffs allege that the arbitrary and unreasonable reduction and any further reductions in assistance to them and to the members of their class is and will be improperly based upon the fact that they are members of the Negro race or of Mexican-American origin and thus denied their equal protection of the laws as required by the United States Constitution.

For A Third Cause of Action: Plaintiffs allege that the unreasonable and arbitrary reduction and any further reduction of Public Assistance to Plaintiffs and to the members of their class unrelated to any reasonable or rational standard but solely based upon the illegal limitations set forth as a result of Article 3, Section 51a, as aforesaid constitutes a taking of property without due process of law as required by the Constitution of the United States, Fourteenth Amendment.

For A Fourth Cause of Action: Plaintiffs allege that the reduction and any future reduction by the State of Texas of the amounts of Public Assistance for Plaintiffs and the members of their class is in violation of the United States Social Security Act as amended and that the reduction of amounts accordingly was and will be illegal, arbitrary and otherwise improper.

For a Fifth Cause of Action: Plaintiffs allege that the provisions of Article 3, Section 51a of the Constitution of the State of Texas are contrary to the United States Social Security Act as amended, and the purposes

set forth therein are contrary to the provisions of the United States Constitution and that this Court should so declare that the provisions of Article 3, Section 51a, are inoperative and in no way limit the right of the Legislature of the State of Texas to appropriate sufficient sums of money to fulfill the requirements under law to Plaintiffs and to the members of their class, and that Texas restore the reductions made as described above, and carry out its obligations under Title 42 U.S.C., Section 402(a)(23).

PRAYER FOR RELIEF

Plaintiffs demand judgment against the Defendants:

1. That pursuant to the provisions of the United States Code, Title 28, Section 2281-2284, a three-judge court be convened forthwith as required therein to hear and determine the issues herein, since provisions of the Constitution of the State of Texas, Article 3, Section 51a, and Title 20A, Article 695(c), Section 18, Vernon's Annotated Texas Statutes, a statute enacted thereunder improperly restricts the Legislature of the State of Texas from appropriating and the Defendants from distributing sums for assistance to Plaintiffs and to members of their class in accordance with need as required by Federal and Texas Law.

2. That said Article 3, Section 51a, and said Title 20A, Article 695(c), Section 18, Vernon's Annotated Texas Statutes, be declared unconstitutional, contrary to the terms and purposes of the United States Social Security Act as amended and be declared as having no force and effect, and that the statewide administrative order, Executive Letter No. E-417, issued by BURTON G. HACKNEY, the Commissioner of the State Department of Public Welfare and Defendant herein on July 26, 1968, be declared null and void and contrary to the requirements of Section 402(a)(23) of the Social Security Act and the Equal Protection clause of the Fourteenth Amendment.

3. That Plaintiffs and all members of their class receive all sums of money denied them by the State of Texas from the date such amounts were illegally reduced,

and that Defendants be required to undertake to correct the errors made by them, their agents, representatives and employees within Thirty (30) days from the entry of judgment herein and remit to all persons whose assistance was reduced such amounts as will make such persons whole from the date of such reduction to the date of such remission together with interest at six per cent (6%).

4. That Defendants be temporarily restrained and preliminarily and permanently enjoined from further reducing A.F.D.C. (Aid for Families with Dependent Children) grants at any time in the future in violation of the Equal Protection Clause of the Fourteenth Amendment and contrary to the requirements of Section 402(a)(23) of the Social Security Act as amended.

5. That the Defendants, as of July 1, 1969, increase the amounts of public assistance as required by the United States Social Security Act, Section 402(a)(23).

6. That this Court retain jurisdiction of the subject matter of this complaint until all the requirements of this Court and of the judgment hereunder are satisfied.

7. That the Plaintiffs be allowed interest from the date of any reduction hereunder and the costs of this action together with necessary and proper fees for legal services given on behalf of said Plaintiffs, together with all necessary other relief as may be just, essential to carrying out the requirements of law, and proper.

Respectfully submitted,

/s/ Ed J. Polk
ED J. POLK

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Date: February 10, 1969

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., PLAINTIFFS

v.

BURTON G. HACKNEY, ET AL., DEFENDANTS

DEFENDANTS' ANSWER—Filed March 6, 1969

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, Burton G. Hackney, Commissioner of the Texas Department of Public Welfare, Will Bond, Chairman of the State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the State Board of Public Welfare, Louis Sarazan, Secretary of the State Board of Public Welfare, and Rosaline Giles, Director of Field Staff, Dallas Regional Office of the Texas Department of Public Welfare, represented herein by Crawford C. Martin, Attorney General of Texas, in reply to Plaintiffs' Complaint, file this their answer, and would respectfully show the Court as follows:

I.

Plaintiffs' Complaint fails to state a claim against the Defendants upon which relief can be granted.

II.

A. Defendants admit that this is an action for a declaratory judgment and for a temporary restraining order against the Defendants, but deny the remaining portions of Paragraph I of Plaintiffs' Complaint.

B. Defendants deny the allegations contained in Paragraph II of Plaintiffs' Complaint.

C. Defendants admit that the Plaintiff, Ruth Jefferson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and that the Plaintiff is a Negro, but Defendants deny that the Plaintiff, Ruth Jefferson, and her children have no income, resources, support or maintenance other than the $123.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. As to the remaining portion of Paragraph III(A), Subparagraph 1(a), the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

D. Defendants admit that the Plaintiff, Emma Gipson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and that the Plaintiff is a Negro, but Defendants deny that the Plaintiff, Emma Gipson, and her children have no income, resources, support or maintenance other than the $102.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. As to the remaining portion of Paragraph III(A), Subparagraph 1(b), the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

E. Defendants admit that the Plaintiff, Jose Apolinor Vasquez, is a resident of the City of Dallas, County of Dallas, State of Texas, and is a Mexican-American, but deny that the Plaintiff is a citizen of the United States and Texas, and except for the sporadic income of Mrs. Vasquez, the Plaintiff and his eight children have no income, resources, support or maintenance other than the $113.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. As to the remaining portion of Paragraph III(A), Subparagraph 1(c), the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

F. Defendants admit that the Plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure, and that the members of the class are so numerous as to make joinder of all members before this Court impossible and impracticable, and that common relief is sought against Defendants' actions directed at the class as a whole, and that there are common questions of law affecting persons receiving AFDC grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas. Defendants deny that there are common questions of fact affecting the rights of all persons receiving AFDC grants and that the interest of the class will be adequately represented by the named Plaintiffs.

G. Defendants admit all of the allegations contained in Paragraph III(B), Subparagraph 1, with the exception of the reference to the statutory provisions contained therein, and to such references to the statutory provisions the Defendants deny such allegations.

H. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 2, save and except the reference to the statutory provisions referred to therein, to which the Defendants deny.

I. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 3, save and except that the Defendants deny that Rosalind Giles has as her responsibility the fixing of AFDC grants.

J. Defendants deny the allegations contained in Paragraph III(C), Subparagraph 4 of Plaintiffs' Complaint.

K. Defendants admit the first sentence of Paragrapn IV, Subparagraph 1 of Plaintiffs' Complaint, but the Defendants deny the remainder thereof.

L. Defendants admit the first sentence of Paragraph IV, Subparagraph 2 of Plaintiffs' Complaint, but the Defendants deny the remainder thereof.

M. Defendants deny the allegations contained in Paragraph IV, Subparagraph 3 of Plaintiffs' Complaint.

N. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allega-

tions contained in Paragraph IV, Subparagraph 4 of Plaintiffs' Complaint.

O. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV, Subparagraph 5 of Plaintiffs' Complaint.

P. Defendants admit that Article III, Section 51-a of the Texas Constitution sets a maximum figure of $60,000,000.00 that may be appropriated by the State Legislature for welfare payments to be spent in a given year, and that Section 18 of Article 695c, Vernon's Civil Statutes, implements such provisions. The Defendants further admit that the State-wide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directs that from September 1, 1968 through August 31, 1969, all AFDC "maximums" shall be reduced by $12.00, but Defendants deny the remaining portion of Paragraph IV, Subparagraph 6 of Plaintiffs' Complaint.

Q. Defendants admit the allegations contained in Paragraph IV, Subparagraph 7 of Plaintiffs' Complaint, with the exception that the Defendants deny that the grants cut were the grants of the Plaintiffs, Ruth Jefferson and Emma Gipson.

R. Defendants admit the allegations contained in Paragraph IV, Subparagraph 8 of Plaintiffs' Complaint.

S. Defendants deny the allegations contained in Subparagraphs 9, 10, 11, 12, 13 and 14 of Paragraph IV of Plaintiffs' Complaint.

T. Defendants deny the allegations contained in Paragraph V of Plaintiffs' Complaint.

III.

The Defendants affirmatively allege that there is a valid reason for making smaller payments on a per capita basis to the recipients of AFDC welfare payments than to welfare programs concerning the aged, blind and disabled. The aged, blind and disabled are normally unable to supplement their grants by gainful employment, but many of the children who are recipients of AFDC assist-

ance can be, and are, gainfully employed. The aged, blind and disabled do not normally have someone legally responsible for their care and support, but many of the children in the AFDC Program do have individuals legally responsible for their care and support—i.e., fathers by way of child support payments. The aged, blind and disabled will normally always require welfare assistance because they will not become younger and unlikely will regain their sight or have their physical disability removed, but the recipients of the AFDC Program will hopefully someday be able to be gainfully employed and many of their parents are young and capable of gainful employment.

IV.

The Defendants affirmatively allege that pursuant to the provisions of Section 51 of Article III of the Constitution of Texas, the Legislature is prohibited from making any grant or authorizing the making of any grant of public moneys to any individual. That the present welfare assistance being given to the aged, blind, disabled and families with dependent children is only authorized pursuant to the express exception to Section 51 of Article III of the Constitution of Texas by Section 51-a of Article IN of the Constitution of Texas. That should Section 51-a of Article III of the Constitution of Texas be held unconstitutional or invalid, the Legislature of Texas would be prohibited pursuant to the provisions of Section 51 of Article III of the Constitution of Texas from making any grants of money to the aged, blind, disabled or families with dependent children.

That the voters of the State of Texas in enacting Section 51-a of Article III of the Constitution of Texas have placed a limit upon the amount of money authorized to be spent by the State of Texas for welfare assistance programs. That the voters of the State of Texas in the last general election refused to increase the constitutional authorization expanding the amount of moneys to be spent for welfare assistance to $75,000,000.00.

V.

That the provisions of Section 6 of Article VIII of the Constitution of Texas provide that no money shall be drawn from the Treasury but in pursuance of specific appropriation made by law. That should the specific appropriations made by the Legislature of Texas to the welfare programs dealing with the aged, blind, disabled and families with dependent children be declared unconstitutional or invalid, then there would be no appropriation for such programs and the Treasurer of the State of Texas would not be authorized in issuing warrants to individuals for benefits under the welfare programs for the aged, blind, disabled and families with dependent children.

WHEREFORE, PREMISES CONSIDERED, the Defendants pray that the relief sought by the Plaintiffs be in all things denied and that the temporary injunction heretofore entered be dissolved and set aside and that the Defendants go hence with their costs.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

HAWTHORNE PHILLIPS
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/s/ Pat Bailey
PAT BAILEY
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Attorneys for Defendants

[Caption Omitted]

AMENDED COMPLAINT—Filed April 8, 1969

I.

STATEMENT

1. This is an action for a declaratory judgment and for a temporary restraining order, and for preliminary and permanent injunctive relief under Title 42, U.S.C., Sections 1983 and 1988 to enforce within the State of Texas guarantees of the Fourteenth Amendment to the United States Constitution and of the Federal Security Act, Title 42, U.S.C., Sections 301 *et seq.*, and more particularly Section 601 *et seq.* The Plaintiffs seek to restrain Defendants from applying, enforcing, executing and implementing Article 3 of the Texas Constitution, Section 51a, Title 20A, Article 695(c), Section 18 of the Public Welfare Act (of Texas) of 1941 V.A.T.S., as amended, House Bill No. 5, 60th Legislature, First Session, and the statewide orders of Burton G. Hackney, Commissioner of State Department of Public Welfare dated July 26, 1968, and Feb. 28, 1969, more precisely identified as Executive Letters Numbers E-417, and E-430, respectively, insofar as such provisions, statutes and statewide orders permit and necessitate the reduction of grants to recipients of Aid to Families with Dependent Children (AFDC) below grant levels existing on and prior to January 2, 1968, without regard to the needs of such recipients and increases in the costs of living, and insofar as such provisions, statutes, and statewide orders reduce rather than increase grants to such recipients after July 1, 1969, regardless of the increase in costs of living since the standards and maximums for such grants were previously established, and insofar as such provisions, statutes, and statewide orders require lower grants to such recipients than are provided to recipients of other public assistance programs established under the Federal Social Security Act without regard to the equal or greater needs of recipients of Aid to Families with Dependent Children.

II.

JURISDICTION

Jurisdiction is based upon:

(a) The Fourteenth Amendment to the United States Constitution;

(b) Title 42, United States Code, Chap. VII, Section 301, *et seq.* and more particularly Section 601 *et seq.*;

(c) Title 28, United States Code, Section 1331 and the amount of controversy exceeds $10,000.00, exclusive of interest and costs;

(d) Title 28, United States Code, Section 1343(3) and (4), 2201, 2202, 2281 and 2284;

(e) Title 42, United States Code, Sections 1983, 1988 and 2000(d);

III (A)

PLAINTIFFS

1. Plaintiff, RUTH JEFFERSON, is an adult Negro citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and has resided in Texas continuously since 1939. She is the mother and sole support of the Plaintiff children, to wit: TONY JEFFERSON, born May 29, 1956; EULA JEFFERSON, born May 3, 1957, ARTHUR P. JEFFERSON, born June 1, 1958; and YOLANDA JEFFERSON, born June 5, 1959; and JACQUELINE JEFFERSON, born July 20, 1960, all of whom live with her at her place of residence. Plaintiff RUTH JEFFERSON was divorced on December 2, 1967, from her husband and the father of the above named Plaintiff children. Although a court decree orders her ex-husband to pay child support, he is Fourteen Hundred and Ten Dollars ($1,410.00) in arrears and the last payment received by Plaintiff RUTH JEFFERSON and said Plaintiff children was May 6, 1968. Plaintiff RUTH JEFFERSON and her children have no income, resources, support or maintenance other than the One Hundred and Twenty-Three Dollars ($123-.00) per month public assistance payments, and agri-

cultural commodities received from the Dallas County Welfare Department.

2. Plaintiff EMMA GIPSON, is an adult Negro citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. She is the sole support of three minor children, to wit: JAMES E. GIPSON, born October 23, 1963; DONALD R. GIPSON, born April 3, 1965 and ANTHONY D. GIPSON, born February 23, 1967, all of whom live with her at her place of residence. Plaintiff EMMA GIPSON was divorced in February of 1968, and receives *no* child support from her ex-husband. Plaintiff EMMA GIPSON and her minor children have no income, resources, support or maintenance other than the One Hundred and Two Dollars ($102-.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department.

3. Plaintiff, JOSE APOLINOR VASQUEZ, is an adult citizen of Mexican-American origin of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. He and his wife are the parents and sole support of the Plaintiff children, to wit: MARGIE VASQUEZ, born November 2, 1952; PAULINE VASQUEZ, born January 15, 1954; FRANCES VASQUEZ, born February 26, 1955; JOSEPHINE and PATRICIA VASQUEZ (twins), born August 22, 1956; MARIO VASQUEZ, born August 22, 1957; and APOLINOR and CARMEN VASQUEZ (twins), born September 1, 1958. Plaintiff JOSE APOLINOR VASQUEZ, is unemployed and too disabled to work due to a broken neck suffered in an automobile accident. His employment prior to the accident was that of a migrant farm worker. He has been unsuccessful in his attempts to collect social security disability benefits. His wife, though employed, is unable to work regularly because of her health, having suffered a heart attack in 1957, with continuing concomitant health problems to the present. Even when Mrs. Vasquez works full time her earnings are insufficient to pay the cost of food for the family. Except for the sporadic income of Mrs. Vasquez, Plaintiff JOSE APOLINOR VASQUEZ and his eight (8) children

have no income, resources, support or maintenance other than the One Hundred and Thirteen Dollars ($113.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department.

4. The Plaintiffs being this action on their own and their children's behalf, and on behalf of all other persons similarly situated pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of all persons receiving Aid to Families with Dependent Children (AFDC) grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas. The members of the class are so numerous as to make joinder of all members before this Court impossible and impracticable. Common relief is sought against Defendants' action directed at the class as a whole. The interest of the class will be adequately represented by the named Plaintiffs.

III (B)

DEFENDANTS

1. Defendants, BURTON G. HACKNEY, is the Commissioner of the State Department of Public Welfare. Pursuant to Vernon's Annotated Civil Statutes, Article 695(c), Section 3(3) of the Texas Statutes, he has the right, power and duty to exercise any right, power and duty conferred on the State Department of Public Welfare unless such right, power or duty is specifically delegated to the duly appointed agent or employees of the Department. Under Article 695(c), Section 4(1) of the Texas Civil Statutes the State Department shall administer aid to needy dependent children including the fixing of the amount of grants complained of herein. The State Department of Public Welfare consists of the State Board of Public Welfare, the Commissioner of Public Welfare, and their officers and employees. Vernon's Annotated Civil Statutes, Article 695(c), Section 2(1).

2. Defendant WILL BOND is Chairman of the State Board of Public Welfare; other members of the State

Board are Defendants W. KENDALL BAKER, Vice-Chairman and LOUIS SARAZAN, Secretary. The Board is responsible for the adoption of all policies, rules and regulations for the government of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of. Vernon's Annotated Civil Statutes, Article 695(c), Section 3(2) of the State of Texas.

3. Defendant ROSALIND GILES is the Director of the Field Staff of the Dallas Regional Office of the State Department of Public Welfare. It is her responsibility under the statutes and regulations of the State Department of Public Welfare to implement the regulations of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of.

III (C)

This suit requires the convening of a three-judge court in accordance with 28 U.S.C., Section 2281 and 2284, because Plaintiffs seek to enjoin the enforcement, operation and execution of a provision of the State constitution, a state statute, and orders of statewide effect made by a state administrative board pursuant to said state constitution and said statute on the grounds of the unconstitutionality of such state constitutional provision, statute and administrative orders.

IV.

STATEMENT OF CLAIM

1. Pursuant to the Federal Social Security Act of 1935, as amended, Texas cooperates with and has filed a plan as required by said Act with the Department of Health, Education and Welfare of the Federal Government to grant assistance to needy blind persons (AB), to needy permanently and totally disabled persons (APTD), to needy old persons (OAA), and to needy families with dependent children (AFDC). Throughout the Federal Social Security Act, the statutory purpose that money will be allocated to such recipients entitled by law from aforesaid categories on the basis of need is made clear. As illustrative of this premise see Title 42, U.S.C., Sec-

tion 302(a)(10)(A), ". . . (The State Plan Shall) provide that the State agency shall, in determining need for such assistance . . . ." See also 42 U.S.C., Section 602(a)(7), 1202(a)(8), and 1352(a)(8).

2. The major part of the monies paid in the form of grants to such needy persons are of federal origin, provided through the Department of Health, Education and Welfare. In return, the Social Security Act imposes a positive obligation upon the states cooperating under it to allocate welfare payments on the basis of need to all persons who are eligible under any one or more of the aforesaid categories of assistance. In Texas, Article III, Section 51(a) of the State Constitution sets a figure of $60,000,000.00 as the maximum amount that may be appropriated from state funds by the state legislature for payments in a given year. Article 695(c) of Vernon's Annotated Texas Statutes, as amended, establishes four welfare categories: OAA (aid to the needy aged); AFDC (aid to families with dependent children); AB (aid to the needy blind); and APTD (aid to the permanently and totally disabled). Section 18 of Article 695(c) provides for the payment of assistance to AFDC recipients within the limitations and provisions of the Constitution of Texas. Other sections make similar provisions for other welfare categories. Pursuant to Article III, Section 51a and Article 695(c), the Texas Legislature, in House Bill Number 5, 60th Legislature, First Session, appropriated for welfare categories during the fiscal year ending August 31, 1969, the following approximate amounts:

Aid to Families With Dependent Children (AFDC)	$ 6,150,000.00
Old Age Assistance (OAA)	$48,160,000.00
Aid to the Blind (AB)	$ 1,400,000.00
Aid to the Permanently and Totally Disabled (APTD)	$ 4,250,000.00

3. In Texas, as in certain other states, substantially lower grants have been given, over a course of many years, to AFDC recipients than have been given to recipients of other federally funded public assistance programs, despite

the equal or greater needs of the needy dependent children in AFDC programs. The particular devices used to effect this discrimination have been the "maximums" provided under state public welfare department statewide orders for AFDC recipients. For example, as of July 1, 1968, an AFDC mother of three (3) children could obtain only $114.00 per month in grant amount regardless of their needs as calculated under standards set by the state public welfare department. An AFDC mother with twelve (12) children could obtain only $135.00 per month regardless of their needs under such standards. In no other federally funded welfare program in Texas were such severe "maximums", totally unrelated to need, established.

4. Because of its concern with the AFDC program, including the excessively low standards of need and maxima in Texas and certain other state AFDC programs, Congress in Section 213(b) of the 1967 amendments to the Social Security Act, signed into law on January 2, 1968, as P.L. 90-248, added a new requirement for state AFDC programs, Section 402(a)(23) (42 U.S.C. 602(a)(23)), which provides that state AFDC plans must:

> provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted.

5. The purpose of requiring the increases in AFDC standards and grants "by July 1, 1969" rather than immediately was to allow time to study what the changes in cost of living have been and to allow for state legislatures to raise the extra appropriations needed to meet the state's share of such increased grants.

6. Rather than so carry out the mandate of Congress, Defendants subsequently issued and carried out a statewide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directing that from September 1, 1968, through August 31, 1969,

all AFDC "maximums" shall be reduced by twelve dollars ($12.00), without regard to changes in the cost of living, standards of need or actual need, to wit: the maximum per month for a mother with one child is reduced from Seventy-Two Dollars ($72.00) to Sixty Dollars ($60.00); for a mother with two children, from Ninety-Three Dollars ($93.00) to Eighty-One Dollars ($81.00); for a mother with three children, from One Hundred and Fourteen Dollars ($114.00) to One Hundred and Two Dollars ($102.00); for a mother with four or more children from One Hundred and Thirty-Five Dollars ($135-.00) to One Hundred and Twenty-Three Dollars ($123-.00). Executive Letter E-417 stated that the proposed cuts in AFDC maximums were made necessary by the fact that ". . . maximum assistance funds are limited by Constitutional provisions and the special session of the Legislature has no means of adjusting AFDC funds of $6,150,000.00, upward since the Constitutional limitation of $60,000,000.00 each state fiscal year for assistance programs had already been completely appropriated.

7. Plaintiffs and the members of their class have qualified under law as perticipants in such programs providing for benefits to families with dependent children. Under Executive Letter E-417, their assistance has been cut in the following manner:

Plaintiff RUTH JEFFERSON, mother of five (5) minor children, had her grant cut from One Hundred and Thirty-Five Dollars to One Hundred and Twenty-Three Dollars ($135.00 to $123.00).

Plaintiff EMMA GIPSON, mother of three (3) minor children had her grant cut from One Hundred and Fourteen Dollars ($114.00) to One Hundred and Two Dollars ($102.00) per month.

8. Beneficiaries receiving assistance under other programs provided for by law, such as aid to the needy blind, aid to the permanently and totally disabled, and aid to the aged have not been so reduced as have been Plaintiffs.

9. Defendants have now issued and have stated that they intend to implement a new statewide administrative order, dated February 28, 1969, and more precisely iden-

tified as Executive Letter E-430, directing that beginning May 1, 1969, standard budgetary allowances for AFDC recipients will be modified to take into account increases in the cost of living, that maximum grant limitation on A.F.D.C. grants will be removed and that A.F.D.C. grants will then be determined by computing the A.F.D.C. dependent group's standard budgetary need, determining the dependent group's "recognizable need" by multiplying the standard budgetary need by a percentage figure (50%), and then subtracting any income figure attributed to the A.F.D.C. dependent group.

10. Under the plan enunciated in Executive Letter E-430, the grant of Plaintiff RUTH JEFFERSON and her five (5) children will be reduced from One Hundred and Twenty Three Dollars ($123.00) per month to One Hundred and Nineteen Dollars and Fifty Cents ($119.50) per month.

The grant of Plaintiff EMMA GIPSON and her three (3) children will be reduced from One Hundred and Two Dollars ($102.00) per month to Ninety-One Dollars ($91.00) per month.

The grant of Plaintiff JOSE APOLINOR VASQUEZ and his eight (8) children will be reduced from One Hundred and Thirteen Dollars ($113.00) per month to approximately Seventy Five Dollars ($75.00) per month. The Texas State Department of Public Welfare has indicated that under the plan set out in Executive Letter E-430, only about 11,500 A.F.D.C. grants will be raised while 20,000 grants will be lowered and 2,200 denied or terminated.

11. Under the E-430 directive, the standard budgetary need schedules for other welfare categories, aid to the needy aged, the needy blind, and the needy permanently and totally disabled will be increased to reflect changes in cost of living, but previously established maximum grants in those categories will remain in effect and no grants will be lowered or terminated. Many such grants will be raised to reflect the increases in the schedule of standard budgetary needs.

12. The reduction in A.F.D.C. grants effected by E-417 and the further reduction which Defendants propose to

effect under E-430 clearly discriminate against Plaintiffs and others in their class as compared to recipients in the other three welfare categories. There is no legal, rational or reasonable basis for the discrimination between Plaintiffs, as beneficiaries of the Aid to Families with Dependent Children program and beneficiaries of other programs referred to herein. Such unreasonable and arbitrary distinctions constitute a denial of equal protection of the law as required by the Fourteenth Amendment to the United States Constitution and cannot be justified in any reasonable manner.

13. Furthermore, the reduction in assistance to families with dependent children effected under E-417 and the reduction proposal under E-430 are based on discrimination because of race in that families with dependent children in the State of Texas are in large part members of the Negro race or of Mexican-American origin, whereas beneficiaries under programs providing assistance to the blind, the permanently disabled and the aged are in substantial part members of the Caucasion race and of non-Mexican origin; that the arbitrary and unreasonable reduction in assistance, as referred to herein, was so effected as to discriminate against Plaintiffs and members of their class because of their race or ethnic origin and so constitutes a denial of equal protection of law as required by the Fourteenth Amendment.

14. In addition, the present and proposed reductions in assistance to the needy dependent children of the A.F.D.C. program, as distinguished from recipients of other programs, are further based upon indivious and arbitrary discriminations against them, as distinguished from other public assistance recipients as a result of popular prejudice against children of unwed mothers. Said discrimination is made even though the A.F.D.C. program consists of both "legitimate" and "illegitimate" children. Such discrimination against "illegitimate" children and other constitutes a denial of the equal protection of law as required by the Fourteenth Amendment.

15. The fiscal year for the appropriations provided by the State of Texas for Public Assistance does not expire until August 31, 1969; that the State of Texas, al-

ready in violation of law as described above, will be in further violation of law no later than July 1, 1969, unless grants to A.F.D.C. recipients are increased to reflect changes in cost of living since the last time A.F.D.C. maximum grants were established and so as not to deny a reasonable minimum standard of living for Plaintiffs and the members of their class.

V

CAUSES OF ACTION

For a First Cause of Action: Plaintiffs allege that present and proposed future reductions of A.F.D.C. grants, resulting from the limitation on State welfare funds contained in Article III, Section 51a of the Texas Constitution and Article 695(c) Section 18, V.A.T.S. and the appropriation of available funds among the four welfare categories under the House Bill No. 5, 60th Legislature, First Session, deny Plaintiffs and all members of the class they represent equal protection of the law guaranteed to them by the Fourteenth Amendment to the United States Constitution, in that the members of the aforesaid class and Plaintiffs are arbitrarily and unreasonably discriminated against as compared with other beneficiaries of the programs of public assistance.

For A Second Cause of Action: Plaintiffs allege that the arbitrary and unreasonable reduction and any further reductions in assistance to them and to the members of their class is and will be improperly based upon the fact that they are members of the Negro race or of Mexican-American origin or that many members of their class are families with illegitimate children and thus deny and will deny them equal protection of the law as required by the United States Constitution.

For A Third Cause of Action: Plaintiffs allege that present and proposed arbitrary and unreasonable reductions in assistance to them and to the members of their class are and will be based upon the fact that they are members of the Negro race or of Mexican-American origin, in violation of 42 United States Code, Section 2000 (d).

For A Fourth Cause of Action: Plaintiffs allege that the unreasonable and arbitrary reduction and any further reduction of public assistance to Plaintiffs and to the members of their class unrelated to any reasonable or rational standard but solely based upon the illegal limitations set forth as a result of Article III, Section 51a, Article 695(c) and House Bill No. 5 as aforesaid constitutes a taking of property without due process of law as required by the Constitution of the United States, Fourteenth Amendment.

For a Fifth Cause of Action: Plaintiffs allege that the reduction and any further reduction by the State of Texas of the amounts of public assistance for Plaintiffs and the members of their class, based upon the illegal limitations set out in Article III, Section 51(a) of the Texas Constitution and Article 695(c), section 18, V.A. T.S., is and will be in violation of the Social Security Act, as amended, and therefore, in violation of Article VI of the United States Constitution.

PRAYER FOR RELIEF

Plaintiffs demand judgment against the Defendants:

1. That pursuant to the provisions of the United States Code, Title 28, Sections 2283-2284, a three-judge court be convened forthwith as required therein to hear and determine the issues herein, since provisions of the Constitution of the State of Texas, Article III, Section 51a, Article 695(c), Section 18, Vernon's Annotated Texas Statutes, and House Bill No. 5, 60th Legislature, First Session, improperly restrict the Legislature of the State of Texas from appropriating and the Defendants from distributing sums for assistance to Plaintiffs and to members of their class in accordance with needs as required by Federal and Texas law.

2. That, to the extent that they illegally limit state welfare expenditures, said Article III, Section 51a, and said Title 20A, Article 695(c), Section 18, V.A.T.S., be declared unconstitutional, contrary to the terms and purposes of the United States Social Security Act as amended and be declared as having no force and effect.

3. That House Bill No. 5, 60th Legislature, First Session, appropriating welfare funds among the various welfare categories so as to work an invidious discrimination against Plaintiffs and others in their class, be declared unconstitutional, null and void and of no force and effect.

4. That the statewide administrative order, Executive Letter No. E-417, issued by Burton G. Hackney, the Commissioner of the Texas State Department of Public Welfare and Defendant herein on July 26, 1968, be declared null and void and contrary to the requirements of the Social Security Act, Section 402(a)(23) and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

5. That the statewide administrative order, Executive Letter No. E-430, issued by Burton G. Hackney, the Commissioner of the Texas State Department of Public Welfare and Defendant herein on February 28, 1969, be declared null and void and contrary to the requirements of Section 402(a)(23) of the Social Security Act and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, and that Defendants be preliminarily and permanently enjoined from implementing said order.

6. That Plaintiffs and all members of their class receive all sums of money denied them by the State of Texas from the date such amounts were illegally reduced, and that Defendants be required to undertake to correct the errors made by them, their agents, representatives and employees within thirty (30) days from the entry of judgment herein and remit to all persons whose assistance was reduced such amounts as will make such persons whole from the date of such reduction to the date of such remission together with interest at six per cent (6%).

7. That Defendants be temporarily restrained and preliminarily and permanently enjoined from further reducing A.F.D.C. grants at any time in the future in violation of the Equal Protection clause of the Fourteenth Amendment and contrary to the requirements of Section 402(a)(23) of the Social Security Act as amended.

8. That the Defendants, as of July 1, 1969, increase the amounts of public assistance as required by the United States Social Security Act, Section 402(a)(23).

9. That this Court retain jurisdiction of the subject matter of this complaint until all the requirements of this Court and of the judgment hereunder are satisfied.

10. That the Plaintiffs be allowed interest from the date of any reduction hereunder and the costs of this action together with necessary and proper fees for legal services given on behalf of said Plaintiffs, together with all necessary other relief as may be just, essential to carry out the requirements of law, and proper.

Respectfully submitted,

Ed J. Polk
Dallas Legal Services
Project
301 North Market
Dallas, Texas

Douglas Larson
Carl Rachlin
Edward Sparer

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., PLAINTIFFS

v.

BURTON G. HACKNEY, ET AL., DEFENDANTS

DEFENDANTS' AMENDED ANSWER—Filed April 21, 1969

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, Burton G. Hackney, Commissioner of the Texas Department of Public Welfare, Will Bond, Chairman of the State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the State Board of Public Welfare, Louis Sarazan, Secretary of the State Board of Public Welfare, and Rosalind Giles, Director of Field Staff, Dallas Regional Office of the Texas Department of Public Welfare, represented herein by Crawford C. Martin, Attorney General of Texas, in reply to Plaintiffs' Amended Complaint, file this their Amended Answer, and would respectfully show the Court as follows:

I.

Plaintiffs' Amended Complaint fails to state a claim against the Defendants upon which relief can be granted.

II.

A. Defendants admit that this is an action for a declaratory judgment and for a temporary restraining order against the Defendants, but deny the remaining portions of Paragraph I of Plaintiffs' Amended Complaint.

B. Defendants deny the allegations contained in Paragraph II of Plaintiffs' Amended Complaint.

C. Defendants admit that the Plaintiff, Ruth Jefferson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of

Texas, and that the Plaintiff is a Negro, as alleged in Paragraph III(A), Subparagraph 1 of Plaintiffs' Amended Complaint, but Defendants deny that the Plaintiff, Ruth Jefferson, and her children have no income, resources, support or maintenance other than the $123.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department as alleged in Paragraph III(A), Subparagraph 1 of Plaintiffs' Amended Complaint. As to the remaining portion of Paragraph III(A), Subparagraph 1, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

D. Defendants admit that the Plaintiff, Emma Gipson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and that the Plaintiff is a Negro, as alleged in Paragraph III(A), Subparagraph 2 of Plaintiffs' Amended Complaint, but Defendants deny that the Plaintiff, Emma Gipson, and her children have no income, resources, support or maintenance other than the $102.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department as alleged in Paragraph III(A), Subparagraph 2 of Plaintiffs' Amended Complaint. As to the remaining portion of Paragraph III(A), Subparagraph 2, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

E. Defendants admit that the Plaintiff, Jose Apolinor Vasquez, is a resident of the City of Dallas, County of Dallas, State of Texas, and is a Mexican-American, as alleged in Paragraph III(A), Subparagraph 3 of Plaintiffs' Amended Complaint, but deny that the Plaintiff is a citizen of the United States and Texas, and except for the sporadic income of Mrs. Vasquez, the Plaintiff and his eight children have no income, resources, support or maintenance other than $113.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department as alleged in Paragraph III(A), Subparagraph 3 of Plaintiffs' Amend-

ed Complaint. As to the remaining portion of Paragraph III(A), Subparagraph 3, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

F. Defendants admit that the Plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure, and that the members of the class are so numerous as to make joinder of all members before this Court impossible and impracticable, and that common relief is sought against Defendants' actions directed at the class as a whole, and that there are common questions of law affecting persons receiving AFDC grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas as alleged in Paragraph III(A), Subparagraph 4 of Plaintiffs' Amended Complaint. Defendants deny that there are common questions of fact affecting the rights of all persons receiving AFDC grants and that the interest of the class will be adequately represented by the named Plaintiffs in Paragraph III(A), Subparagraph 4 of Plaintiffs' Amended Complaint.

G. Defendants admit all of the allegations contained in Paragraph III(B), Subparagraph 1 of Plaintiffs' Amended Complaint with the exception of the reference to the statutory provisions contained therein, and to such references to the statutory provisions the Defendants deny such allegations.

H. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 2 of Plaintiffs' Amended Complaint save and except the reference to the statutory provisions referred to therein, to which the Defendants deny.

I. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 3 of Plaintiffs' Amended Complaint save and except that the Defendants deny that Rosalind Giles has as her responsibility the fixing of AFDC Grants.

J. Defendants deny the allegations contained in Paragraph III(C) of Plaintiffs' Amended Complaint.

K. Defendants admit the first sentence of Paragraph IV, Subparagraph 1 of Plaintiffs' Amended Complaint, but the Defendants deny the remainder thereof.

L. Defendants admit the first sentence of Paragraph IV, Subparagraph 1 of Plaintiffs' Amended Complaint, but the Defendants deny the allegations contained in the second sentence of Paragraph IV, Subparagraph 1 of Plaintiffs' Amended Complaint. Defendants admit that in Texas, Article III, Section 51-a of the Constitution of Texas sets a figure of $60,000,000.00 that may be appropriated from State funds by the Legislature of the State of Texas for welfare assistance grant payments in a given year, and that Article 695(c), Vernon's Civil Statutes, establishes four welfare categories: OAA (Aid to the Needy Aged); AFDC (Aid to Families with Dependent Children); AB (Aid to the Needy Blind); and APTD (Aid to the Permanently and Totally Disabled), and that Article 695(c) provides for the payment of assistance to AFDC recipients within the limitations and provisions of the Constitution and statutes of the State of Texas, and that other sections of Article 695(c), Vernon's Civil Statutes, make similar provisions for other welfare categories. Defendants further admit that the Texas Legislature, in House Bill 5, 60th Legislature, appropriated for welfare categories during the fiscal year ending August 31, 1969, the following amounts: AFDC—$6,150,000.00; AB—$1,400,000.00; APTD—$4,250,000.00; but the Defendants deny that the House Bill 5 referred to by the Plaintiffs was at the First Session or that the amount appropriated to the Old Age Assistance Program was the sum of $48,160,000.00 or that such amounts were "approximate" amounts, in Paragraph IV, Subparagraph 2.

M. Defendants deny the allegations contained in Paragraph IV, Subparagraph 3 of Plaintiffs' Amended Complaint.

N. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV, Subparagraph 4 of Plaintiffs' Amended Complaint.

O. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allega-

tions contained in Paragraph IV, Subparagraph 5 of Plaintiffs' Amended Complaint.

P. Defendants admit the last sentence of Paragraph IV, Subparagraph 6 of Plaintiffs' Amended Complaint, but Defendants deny the remaining portion of Paragraph IV, Subparagraph 6 of Plaintiffs' Amended Complaint.

Q. Defendants admit the allegations contained in Paragraph IV, Subparagraph 7 of the Plaintiffs' Amended Complaint, with the exception that the Defendants deny that the grants cut were the grants of the Plaintiffs, Ruth Jefferson and Emma Gipson.

R. Defendants admit the allegations contained in Paragraph IV, Subparagraph 8 of Plaintiffs' Amended Complaint.

S. Defendants admit that they have now issued and intend to implement a new statewide administrative order, dated February 28, 1969, and more precisely identified as Executive Letter E-430, directing that beginning May 1, 1969, standard budgetary allowances for all categories of welfare recipients will be modified to take into account increases in the cost of living and that maximum grant limitations on AFDC grants will be removed and that all welfare assistance grants will then be determined by computing the defendant groups' standard budgetary need, determining the dependent groups' "recognizable" need by multiplying the standard budgetary need by a percentage figure, but the Defendants deny that Executive Letter E-430 sets such percentage figure at fifty percent (50%), and the Defendants further deny the allegation contained in Paragraph IV, Subparagraph 9 of Plaintiffs' Amended Complaint, to the effect that ". . . and then subtracting any income figure attributed to the A.F.D.C. dependent groups."

T. Defendants admit the allegations contained in Paragraph IV, Subparagraph 10 of Plaintiffs' Amended Complaint with the exception that the grant to Ruth Jefferson and her five (5) children will be reduced to $120.00 rather than $119.50, and the reference to Executive Letter E-430 for the reason that the plan referred to is set out in Executive Letter E-430 and Executive Letter E-434.

U. Defendants deny the allegations contained in Paragraph IV, Subparagraphs 11, 12, 13, and [illegible] of Plaintiffs' Amended Complaint.

V. Defendants admit that the fiscal year for the appropriations provided by the State of Texas for public assistance does not expire until August 31, 1969, but deny the remaining portion of Paragraph IV, Subparagraph 15 of Plaintiffs' Amended Complaint.

W. Defendants deny the allegations contained in each Subparagraph of Paragraph V of Plaintiffs' Amended Complaint.

III.

The Defendants affirmatively allege that there is a valid reason for making smaller payments on a per capita basis to the recipients of AFDC welfare payments than to welfare programs concerning the aged, blind and disabled. The aged, blind and disabled are normally unable to supplement their grants by gainful employment, but many of the children who are recipients of AFDC assistance can be, and are, gainfully employed. The aged, blind and disabled do not normally have someone legally responsible for their care and support, but many of the children in the AFDC Program do have individuals legally responsible for their care and support—i.e., fathers by way of child support payments. The aged, blind and disabled will normally always require welfare assistance because they will not become younger and unlikely will regain their sight or have their physical disability removed, but the recipients of the AFDC Program will hopefully someday be able to be gainfully employed and many of their parents are young and capable of gainful employment.

IV.

The Defendants affirmatively allege that pursuant to the provisions of Section 51 of Article III of the Constitution of Texas, the Legislature is prohibited from making any grant or authorizing the making of any grant of public moneys to any individual. That the present welfare assistance being given to the aged, blind, disabled and

families with defendent children is only authorized pursuant to the express exception to Section 51 of Article III of the Constitution of Texas by Section 51-a of Article III of the Constitution of Texas. That should Section 51-a of Article III of the Constitution of Texas be held unconstitutional or invalid, the Legislature of Texas would be prohibited pursuant to the provisions of Section 51 of Article III of the Constitution of Texas from making any grants of money to the aged, blind, disabled or families with dependent children.

That the voters of the State of Texas in enacting Section 51-a of Article III of the Constitution of Texas have placed a limit upon the amount of money authorized to be spent by the State of Texas for welfare assistance programs. That the voters of the State of Texas in the last general election refused to increase the constitutional authorization expanding the amount of moneys to be spent for welfare assistance to $75,000,000.00.

V.

That the provisions of Section 6 of Article VIII of the Constitution of Texas provide that no money shall be drawn from the Treasury but in pursuance of specific appropriation made by law. That should the specific appropriations made by the Legislature of Texas to the welfare programs dealing with the aged, blind, disabled and families with defendent children be declared unconstitutional or invalid, then there would be no appropriation for such programs and the Treasurer of the State of Texas would not be authorized in issuing warrants to individuals for benefits under the welfare programs for the aged, blind, disabled and families with dependent children.

VI.

That the relief sought by the Plaintiffs would have the effect of requiring this Court to take over management of the fiscal affairs of the State of Texas by determining the amounts of appropriations to be made and the uses to which such funds are to be expended, and such result would be in clear contravention of the Eleventh Amendment of the Constitution of the United States.

WHEREFORE, PREMISES CONSIDERED, The Defendants pray that the relief sought by the Plaintiffs be in all things denied and that the Defendants go hence with their costs.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

HAWTHORNE PHILLIPS
Executive Assistant

/s/ Pat Bailey
PAT BAILEY
Assistant Attorney General

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Capitol Station
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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., Individually, On Behalf of Their Minor Children and On Behalf of All Others Similarly Situated, PLAINTIFFS,

v.

BURTON G. HACKNEY, ET AL., Individually and In Their Official Capacities, DEFENDANTS,

ANSWERS TO SUPPLEMENTAL WRITTEN INTERROGATORIES

NOW COME the Defendants in the above styled and numbered cause and herewith submit Defendants' Answers to Plaintiff's Request for Supplemental Written Interrogatories.

INTERROGATORY NO. 1. Attached are Exhibits showing the maximum grant and amount of reduction in payment by date for the past twenty (20) years for the four (4) categories:

Exhibit A represents Old Age Assistance; *Exhibit B*, Aid to the Permanently and Totally Disabled; *Exhibit C*, Aid to the Blind; and *Exhibit D*, Aid to Families with Dependent Children.

These Exhibits were made from the trends tables or reports maintained by the Fiscal Division of the State Department of Public Welfare. They show dates maximum grants were changed and dates reductions in payments were made in the respective categories. This represents the only compilation the Department has showing the changes in maximum grants and amounts in reductions of payments. The Executive Letters which were submitted as *Exhibit C* in Defendants' Answers to Plaintiffs' Original Written Interrogatories describe the changes and how the reductions were made.

Other "across the board" changes made at various times in special items could have affected the amounts of grants

"across the board" but not necessarily the maximums. These would have been reflected in the *Manual of Services* and/or the Executive Letters, but the Defendants have no compilation of these changes. Such information might possibly be assembled from the Executive Letters which have already been submitted to this Court.

INTERROGATORY NO. 2. Defendants' answer to INTERROGATORY NO. 1 supplies the information that is available to the Defendants' to answer INTERROGATORY NO. 2.

/s/ Burton G. Hackney
BURTON G. HACKNEY
Commissioner, State Department
of Public Welfare

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Burton G. Hackney, Commissioner of the Department of Public Welfare, after first being duly sworn according to law, upon his oath states that he is the Commissioner of the Department of Public Welfare and states that the statements contained in the above and foregoing Answers to Supplemental Written Interrogatories are true and correct.

/s/ Burton G. Hackney
BURTON G. HACKNEY

Subscribed and sworn to before me this the 29th day of April, 1969.

/s/ Mrs. Opal Hunt
MRS. OPAL HUNT
Notary Public in and for
Travis County, Texas

EXHIBIT A

OLD AGE ASSISTANCE

Maximum Grant and Amount of Reduction in Payment by Date

Date		Amount	
From	To	Maximum Grant	Reduction in Payment
October 1948	March 1950	$ 50	None
April 1950	August 1950	50	$0.50 per recipient
September 1950	January 1952	50	$1.00 per recipient
February 1952	May 1952	50	$0.50 per recipient
June 1952	September 1952	50	$0.25 per recipient
October 1952	July 1955	55	None
August 1955		55	$1.00 per recipient
September 1955	September 1956	55	None
October 1956	November 1957	58	None
December 1957	September 1958	60	None
October 1958	February 1959	65	None
March 1959	September 1959	66	None
October 1959	November 1960	67	None
December 1960	August 1961	68	None
September 1961	April 1962	71	None
May 1962		72	None
June 1962	September 1962	73	None
October 1962	March 1963	82	None
April 1963	August 1965	83	None
September 1965	December 1965	95	None
January 1966	May 1966	97	None
June 1966	September 1967	100	None
October 1967	April 1968	104	None
May 1968	June 1968	106	None
July 1968		110	None

EXHIBIT B

AID TO THE PERMANENTLY AND TOTALLY DISABLED

Maximum Grand and Amount of Reduction in Payment by Date

Date			Amount
From	To	Maximum Grant	Reduction in Payment
September 1957	September 1958	$58	None
October 1958	February 1959	63	None
March 1959	September 1959	64	None
October 1959	September 1962	65	None
October 1962	December 1965	69	None
January 1966	September 1966	71	None
October 1966		72	None
November 1966	September 1967	74	None
October 1967	June 1968	79	None
July 1968		84	None

EXHIBIT C

AID TO THE NEEDY BLIND

Maximum Grant and Amount of Reduction in Payment by Date

Date		Amount	
From	To	Maximum Grant	Reduction in Payment
October 1948	March 1950	$50	None
April 1950	August 1950	50	$0.50 per recipient
September 1950	January 1952	50	$1.00 per recipient
February 1952	May 1952	50	$0.50 per recipient
June 1952	September 1952	50	$0.25 per recipient
October 1952	July 1955	55	None
August 1955		55	$3.00 per recipient
September 1955	September 1956	55	None
October 1956	November 1957	58	None
December 1957	September 1958	60	None
October 1958	February 1959	65	None
March 1959	September 1959	66	None
October 1959	November 1960	67	None
December 1960	August 1961	68	None
September 1961	April 1962	71	None
May 1962		72	None
June 1962	September 1962	80	None
October 1962	December 1965	90	None
January 1966	May 1966	92	None
June 1966	September 1966	95	None
October 1966		96	None

EXHIBIT D

AID TO FAMILIES WITH DEPENDENT CHILDREN

Maximum Grant and Amount of Reduction in Payment by Date

Date		Amount	
From	To	Maximum Family Grant	Reduction in Payment
November 1948	April 1949	$ 81	None
May 1949	June 1949	81	5 per cent per family
July 1949		81	7 per cent per family
August 1949		81	4 per cent per family
September 1949		81	9 per cent per family
October 1949	November 1949	81	6 per cent per family
December 1949		81	9 per cent per family
January 1950	April 1950	81	11 per cent per family
May 1950	July 1950	81	16 per cent per family
August 1950		81	14 per cent per family
September 1950	October 1950	81	16 per cent per family
November 1950	March 1951	72	None
April 1951	February 1952	81	None
March 1952	September 1952	85	None
October 1952	January 1954	96	None
February 1954	April 1954	96	$2.00 per child—Maximum reduction per family $8.00
May 1954	March 1955	96	$2.50 per child—Maximum reduction per family $10.00
April 1955	May 1955	96	$3.00 per child—Maximum reduction per family $12.00
June 1955	February 1956	96	$4.00 per child—Maximum reduction per family $16.00
March 1956	September 1956	96	$2.00 per child—Maximum reduction per family $8.00
October 1956	April 1958	96	None
May 1958	December 1958	96	$1.00 per child—Maximum reduction per family $4.00
January 1959	February 1960	96	None
March 1960	November 1960	99	None
December 1960	May 1964	107	None
June 1964	August 1965	115	None
September 1965	December 1965	130	None
January 1966	August 1968	135	None
September 1968		123	None

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., PLAINTIFFS

v.

BURTON G. HACKNEY, ET AL., DEFENDANTS

ORDER—May 2, 1969

On this the 2 day of April, 1969, came on for consideration the Motion of the Defendants pursuant to Rule 42(a), Federal Rules of Civil Procedure, for consolidation of Civil Action No. SA69CA76 in the United States District Court for the Western District of Texas, San Antonio Division, styled Maria T. Davila, et al vs. Burton G. Hackney, et al, with the instant proceeding, and the Court having considered the Motion of the Defendants is of the opinion that the same is well taken and should be granted;

It is accordingly ORDERED that Civil Action No. SA69CA76 in the United States District Court for the Western District of Texas, San Antonio Division, styled Maria T. Davila, et al vs. Burton G. Hackney, et al be and the same is hereby consolidated with the instant proceeding.

Dated this 2 day of May, 1969.

/s/ Sarah T. Hughes

[Caption Omitted]

STIPULATIONS OF FACT

Now comes the defendants by their attorneys, and the plaintiffs by their attorneys and prior to trial on this case agree and stipulate that the E-Letters of the State Department of Public Welfare (more specifically E-417, E-430 and E-434, as well as Forms 36, dated as follows, July, 1968, January, 1969, and May, 1969), along with the 1968 Annual Report of the State Department of Public Welfare, along with the requests for admissions in this case, and interrogatories and the respective answers thereto, and along with all depositions in this case (to which it is stipulated that the answers by the parties given in said depositions are the same as the answers said parties would have given if they testified in open court), all of which are filed herein, is hereby offered into evidence by plaintiffs and defendants for all purposes and is hereby stipulated as evidence in this case, and further the following stipulations are also made:

1.

That plaintiff, Maria T. Davila, is a resident of San Antonio, Bexar County, Texas; that she is the mother of three minor children and prior to May 1, 1969, was a recipient of Aid to Families With Dependent Children, and was receiving public assistance in the amount of $54.00 per month; that effective May 1, 1969, she was dropped from the public assistance rolls by the defendants herein as a result of the implementation of the plan as set forth in E-430 and E-434.

2.

That plaintiff, Jo Ann Gutierrez, is a resident of San Antonio, Bexar County, Texas; that she is the mother of four minor children and prior to May 1, 1969, was a recipient of Aid To Families With Dependent Children, and was receiving public assistance in the amount of $123.00 per month; that effective May 1, 1969, she had her public assistance reduced to $107.00 per month as a result of the implementation of the plan as set forth in E-430 and E-434.

3.

That plaintiff, Ruth Jefferson, is an adult Negro citizen of the United States and Texas, and a resident of the City of Dallas, Dallas County, Texas; that she is the mother and sole supporter of her five minor children who live with her at her place of residence; that she and her children have no regular income, resources, support or maintenance other than the $120.00 per month public assistance payments and agricultural commodities received from the United States Department of Agriculture, but does receive spasmodic assistance in the form of money from the Orleans Fund, and has worked on brief occasions.

4.

That plaintiff, Emma Gipson, is an adult Negro citizen of the United States and Texas, and a resident of the City of Dallas, Dallas County, Texas; that she is the mother and sole supporter of her three minor children who live with her at her place of residence; that she and her children have no regular income, resources, support or maintenance other than $102.00 per month public assistance payments and agricultural commodities received from the United States Department of Agriculture, but has worked somewhat regularly in the past.

5.

That plaintiff, Jose Apolinar Vasquez, is an adult Mexican-American non-citizen of the United States and Texas and is a resident of the City of Dallas, Dallas County, Texas; that he is the father and he and his wife are the sole supporters of their eight minor children who live with him at his place of residence.

5a.

Under Executive Letter E-417 Plaintiffs, Ruth Jefferson and Emma Gipson, mothers of five and three minor children respectively, have had their grants cut from $135.00 to $123.00 and from $114.00 to $102.00 respectively per month.

5b.

Under the plan enunciated in Executive Letter E-430, the grant of plaintiff, Ruth Jefferson, and her five children will be reduced from $123.00 per month to $120.00 per month.

The grant of plaintiff, Emma Gipson, and her three children will be reduced from $102.00 to $91.00 per month.

The grant of Jose Apolinar Vasquez and his eight children will be reduced from $113.00 per month to $89.00 per month.

6.

That defendant, Will Bond, is Chairman of the State Board of Public Welfare; that defendant W. Kendall Baker, is Vice-Chairman of the State Board of Public Welfare, and that defendant, Louis Sarazan, is Secretary of the State Board of Public Welfare; that the Board is responsible for the adoption of all policies, rules and regulations for the government of the State Department of Public Welfare, including the fixing of policy for Administration of A.F.D.C. grants herein complained of and are charged with the administration of welfare activities of the State as provided by Art. 695 (c) V.A.T.S.

7.

That defendant, Burton G. Hackney, is the Commissioner of the State Department of Public Welfare, and pursuant to Art. 695 (c) V.A.T.S., he has the statutory responsibility to discharge all administrative and executive functions for the State Department of Public Welfare, and that he has the right, power and duty to exercise any right, power and duty conferred on the State Department of Public Welfare unless such right, power and duty is specifically delegated to the duly appointed agent or employee of the Department; that under Art. 695 (c) V.A.T.S. he shall administer aid to needy dependent children including the fixing of the amount of grants complained of herein; that the State Department of Public Welfare consists of the State Board of Public Welfare, the Commissioner of Public Welfare, and their officers and employees.

8.

That defendant, Raymond Cheves, is the Regional Director of the San Antonio Regional Office of the State Department of Public Welfare and is responsible for enforcing the regulations of the State Department of Public Welfare and is the agent of the defendant, Burton G. Hackney, in the administration of the Aid To Families With Dependent Children program in the City of San Antonio, Bexar County, Texas; and that defendant, Rosalind Giles, is the Director of the Field Staff of the Dallas Regional Offices of the State Department of Public Welfare, and it is her responsibility under the statutes and regulations of the State Department of Public Welfare to implement the regulations of the State Department of Public Welfare.

9.

Pursuant to the Federal Social Security Act of 1935, as amended and Texas statutory and constitutional provisions, Texas cooperates with and has filed a plan as required by said Act with the Department of Health, Education and Welfare of the Federal Government to grant assistance to needy blind persons (AB), to needy permanently and totally disabled persons (APTD), to needy old persons (OAA), and to needy families with dependent children (AFDC); and that the major part of the moneys paid in the form of grants to needy persons within the State of Texas are of federal origin, provided through the Department of Health, Education, and Welfare.

10.

That in Texas Art. III, 51-a of the State Constitution sets a figure of $60,000,000.00 as the maximum amount that may be appropriated from state funds by the state legislature for payments in a given year; that Art. 695 (c) V.A.T.S. as amended, establishes four welfare categories; OAA (aid to the needy aged); AFDC (aid to families with dependent children); AB (aid to the blind); and APTD (aid to the permanently and totally disabled); that Art 695 (c) V.A.T.S. also provides for the payment of the assistance of AFDC recipients within the limita-

tions and provisions of the Constitution of Texas, other sections make similar provisions for other welfare categories, pursuant to Art. III, Section 51-a, and Art. 695 (c) V.A.T.S.; that the Texas Legislature, in House Bill Number 5, 60th Legislature, First Call Session, appropriated for welfare categories during the fiscal year ending August 31, 1968, the following amounts:

A.F.D.C.	$ 6,150,000.00
O.A.A.	$48,200,000.00
A.B.	$ 1,400,000.00
A.P.T.D.	$ 4,250,000.00

11.

That present constitutional provisions of the Texas Constitution, limit, by their terms, the amount of money that the Legislature of the State of Texas is authorized to appropriate for assistance grants to the OAA, AB, APTD and AFDC programs to $60,000,000.00.

12.

The Legislature of Texas has presently appropriated for fiscal year September 1, 1968 to August 31, 1969, the $60,000,000.00 authorized for assistance grants in the OAA, AB, APTD and AFDC programs in the following manner:

OAA	$48,200,000.00
AB	1,400,000.00
APTD	4,250,000.00
AFDC	6,150,000.00

13.

Congress in Section 213 (b) of the 1967 amendments to the Social Security Act, signed into law on January 2, 1968, as P. L. 90-248, added a new requirement for state AFDC programs, Section 402 (a) (23) (42 U.S.C. 602 (a) (23)), which provides that state AFDC plans must:

provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted.

14.

Defendants issued and carried out a statewide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directing that effective September 1, 1968, all AFDC "maximum grants" shall be reduced by twelve dollars. The maximum per month for a mother with one child is reduced from $72.00 to $60.00; for a mother with two children, from $94.00 to $81.00; for a mother with three children from $114.00 to $102.00; for a mother with four or more children from $135.00 to $123.00.

15.

Executive Letter E-417 stated that the proposed cuts in AFDC maximums were made necessary by the fact that ". . . maximum assistance funds were limited by Constitutional provisions and the special session of the Legislature has no means of adjusting AFDC funds of $6,150,000.00, upward since the Constitutional limitation of $60,000,000.00 each state fiscal year for assistance programs had already been completely appropriated.

16.

Plaintiffs and the members of their class have qualified under law as participants in such programs providing for benefits to families with dependent children.

17.

See Stipulation 5a.

18.

Beneficiaries receiving assistance under other programs provided for by law, such as aid to the needy blind, aid

to the permanently and totally disabled, and aid to the aged were not reduced by the implementation of E-417 as were plaintiffs.

19.

No Stipulation.

20.

Defendants have now implemented a new statewide administrative order, dated February 28, 1969, and more precisely known as Executive Letter E-430, and Executive letter E-434, directing that beginning May 1, 1968, standard budgetary allowances for AFDC recipients will be modified to take into account increases in the cost of living, that maximum grant limitation of AFDC grants will be removed and that AFDC grants will then be determined by multiplying the AFDC dependent group's standard budgetary need (50% at this time which may be adjusted as funds permit) in order to determine the recipient's recognizable needs (as defined in Letter E-430), and then subtracting any adjusted income figure attributable to the AFDC dependent group. Adjusted income means the income remaining from earned income after subtracting the first $30 and ⅓ of the remainder, and further subtracting work related expenses and child care, plus all non-earned income without deduction.

21.

See 5b.

22.

No Stipulation.

23.

That at the present time, the percentage of "needs" being met as calculated by the defendants to be necessary for minimal survival requirements that the defendants meet in each program is set forth in the following table:

Program	%age of Needs Met
OAA	100%
APTD	95%
AB	95%
AFDC	50%

24.

That during the month of August, 1968, 91.8% of the Old Age Assistance recipients received 100% of their unmet budgetary needs, 69.7% of the Aid to the Blind recipients received 100% of their unmet budgetary needs, 72.4% of the Aid to the Permanently and Totally Disabled recipients received 100% of their unmet budgetary needs, and 43.5% of the Aid to Families with Dependent Children recipients received 100% of their unmet budgetary needs.

25.

That the following table is an accurate statement of Net Fund Expenditures for OAA, APTD, AB and AFDC in Texas by source of funds for the fiscal year ended August 31, 1968

Program	Total	Source		% from state
		Federal	State	
OAA	$167,529,066.54	$119,366,167.78	$48,162,898.76	29%
APTD	10,020,681.00	5,773,561.75	4,247,119.25	42%
AB	3,719,944.00	2,319,978.17	1,399,965.83	38%
AFDC	32,425,700.00	26,276,272.27	6,149,427.73	19%

26.

That the following table is an accurate statement of number of recipients by program in August, 1968:

Program	Number of Recipients
OAA	229,654 recipients
APTD	15,962 recipients
AB	4,154 recipients
AFDC	138,942 mother & children recipients

27.

That AFDC grant expenditures by the State of Texas are matched with federal money at a ratio of 1:3 (state to federal).

28.

That OAA, AB and APTD grant expenditures by the State of Texas are matched with federal money at a ratio of 1:2 (state to federal).

29.

That the matching fund formula applied by HEW is different in the AFDC program than the formulas applied to the OAA, AB and APTD programs.

The Department of Health, Education and Welfare allows the states to administer a common program for OAA, AB, and APTD, but does not allow this as to the AFDC program.

30.

On a national basis, Texas (for the year ended December 31, 1967) has the seventh highest per capita contribution to OAA ($4.88) and the third lowest per capita contribution to AFDC ($.60) while the national average per capita contribution to OAA is $3.10 and to AFDC is $5.10; that Texas ranks 24th in per capita contributions ($.10) to AB and last in per capita contributions to APTD ($.22); while the national average per capita contribution to AB is $.19 and to APTD is $1.28.

31.

That according to figures provided by the State Department of Public Welfare, the following table is an accurate statement of the racial and ethnic characteristics of recipients, by category, as of March 1, 1969:

Program	White-Anglo	Black & Mexican-American	Black	Mex-American
AFDC	15.4%	84.6%	44.6%	40.0%
OAA	62.5%	37.5%	22.0%	15.5%
APTD	56.6%	43.4%	26.9%	16.5%
AB	44.3%	54.2%	35.2%	19.0%

33.

That according to figures provided by the State Department of Public Welfare, the following table is an accurate statement of the racial and ethnic characteristics of recipients, by category, for a period beginning September 1, 1967, and ending March 31, 1969.

Program	Year	% of Negroes & Mex-Americans	% of White-Anglos
OAA	1969	39.8	60.2
	1968	38.7	61.3
	1967	37.0	63.0
APTD	1969	46.9	53.1
	1968	45.6	54.4
	1967	46.2	53.8
AB	1969	54.2	44.3
	1968	54.9	45.1
	1967	54.7	45.3
AFDC	1969	87.0	13.0
	1968	84.9	15.1
	1967	86.0	14.0

32.
(out of sequence)

That families with dependent children who are in the State of Texas are in large part members of the Negro race or are of Mexican-American origin; whereas, beneficiaries under programs providing assistance to the aged are in substantial part of the Caucasian race and are of non-Mexican origin.

34.

No person, either White-Anglo, Negro or Mexican-American, in that class of people receiving assistance grants under the OAA, AB or APTD programs operated by the State of Texas have been made a party to this proceeding.

35.

Since 1967 there has been an increase in the percentage of Negroes and Mexican-Americans receiving benefits in the OAA, AB, APTD and AFDC programs in Texas.

36.

Since 1967 there has been a decrease in the percentage of White-Anglos receiving benefits in the OAA, AB, APTD and AFDC programs in Texas.

37.

The new budgetary system of the Texas Department of Public Welfare, effective May 1, 1969, resulted in approximately 22,812 AFDC families (eligible as of April 1, 1969) having their assistance grants reduced; 2,470 AFDC families (eligible as of April 1, 1969) having their assistance grants terminated; 14,000 AFDC families (eligible as of April 1, 1969) having their assistance grants raised or remaining the same.

38.

That the majority of the AFDC families having their assistance grant raised on May 1, 1969, were large families.

39.

The large family groups receiving AFDC assistance grants are predominately Negro and Mexican-American.

39a.

The majority of all family groups receiving AFDC, both large and small, are predominantly Negro and Mexican-American.

40.

That the estimated population 65 years old and over in the State of Texas, July 1, 1967, was 904,000 persons, of which 25.1% were receiving Old Age Assistance.

41.

That the estimated population under eighteen years of age in the State of Texas July 1, 1967, was 4,101,000 persons, of which 2.3% were receiving Aid to Families with Dependent Children.

42.

There are approximately 8 times the number of family units in the OAA program in Texas as in the AFDC. That more than five (5) times the total amount (federal and state funds) are spent on the recipients in the OAA, AB and APTD categories as is spent on the recipients in the AFDC category, although the former number twice the latter. (Each recipient in OAA is not necessarily a family unit. It is possible for a husband and wife in the same family to independently qualify for OAA whereby each is a recipient.)

43.

That within the past three years "maximum grants" (dollar limitation) have been increased three times in OAA while grant maximums have been reduced once in the last year in AFDC and were removed on May 1, 1969 in AFDC only; however, separate percentage control figures were established for the various categories as described in Stipulation #23.

44.

That the following table accurately states, for all four categories, the reductions in maximum grants from 1955 through mid-1969:

Program	Number of Times the Maximum Grant was Reduced
OAA	Once—in 1955
APTD	None (information dates from 1957 only)
AB	Once—in 1955
AFDC	Five times

45.

That the following chart is an accurate statement of budget requests and appropriations for the years 1964 through 1971:

1964	Requested	Appropriated	Expended	Balance
OAA	$41,700,000	$41,700,000	$41,700,000	$-0- **
APTD	1,500,000	1,683,000	1,583,000	-0- **
AFDC	3,900,000	3,900,000	3,900,000	-0- **
AB	1,400,000	1,400,000	1,400,000	-0- **
1965				
OAA	$41,700,000	$41,700,000	$41,700,000	$-0- **
APTD	1,500,000	1,690,000	1,690,000	-0- **
AFDC	3,900,000	3,900,000	3,900,000	-0- **
AB	1,400,000	1,400,000	1,400,000	-0- **
1966				
OAA	$41,700,000	$41,700,000	$41,700,000	-0- **
APTD	1,690,000	3,250,000	2,385,198	864,802
AFDC	3,900,000	5,650,000	5,465,505	184,495
AB	1,400,000	1,400,000	1,270,416	129,584
1967				
OAA	$41,700,000	$41,700,000	$41,700,000	-0- **
APTD	1,690,000	3,250,000	3,250,000	-0- **
AFDC	3,900,000	5,650,000	5,650,000	-0- **
AB	1,400,000	1,400,000	1,386,666	13,334
1968				
OAA	$47,200,000	$48,200,000	$48,162,898	37,101
APTD	4,250,000	4,250,000	4,247,119.25	2,881
AFDC	7,150,000	6,150,000	6,149,427.73	572
AB	1,400,000	1,400,000	1,399,965.83	34

** There was a small balance remaining at the end of the fiscal year.

1969	Requested	Appropriated
OAA	$48,200,000	$48,200,000
APTD	4,250,000	4,250,000
AFDC	6,150,000	6,150,000
AB	1,400,000	1,400,000
1970*		
OAA	$48,200,000	$48,200,000
APTD	4,250,000	4,250,000
AFDC	6,150,000	6,150,000
AB	1,400,000	1,400,000
1971*		
OAA	$48,200,000	$48,200,000
APTD	4,250,000	4,250,000
AFDC	6,150,000	6,150,000
AB	1,400,000	1,400,000

* These amounts requested by the State Department of Public Welfare and appropriated by 61st Texas Legislature conditioned on the Constitutional Amendment not passing.

46.

That the fiscal year for the appropriations provided by the State of Texas for public assistance will not expire until August 31, 1969.

48.

That since 1943 there have been six (6) increases in the amount of money appropriated to the OAA program by the Legislature of the State of Texas.

47.
(out of sequence)

That since 1943, there have been no reductions in the amount of money appropriated to the OAA, AB or AFDC programs by the Legislature of the State of Texas.

49.

That since 1943 there have been five (5) increases in the amount of money appropriated to the AB and AFDC programs.

50.

That since 1959 there have been two (2) increases in the amount of money appropriated to the AFDC program by the Legislature of the State of Texas.

51.

That since 1943 the monetary appropriations by the Legislature of the State of Texas to the OAA, AB and AFDC programs have increased the monetary expenditures in such programs by the following percentages:

OAA	—	211%
AB	—	200%
AFDC	—	410%

51a.

That since 1944 the number of persons receiving public assistance grants from the state of Texas in the OAA and AFDC programs has increased by the following percentages:

OAA	—	33.5%
AFDC	—	310.3%

Since 1954 the number of persons receiving public assistance grants from the state of Texas in the OAA and AFDC programs has increased by the following percentages:

OAA	—	2.5%
AFDC	—	68.3%

52.

In the past 26 years the appropriations by the Legislature of the State of Texas have been increasing in the

AFDC program at approximately twice the rate as in the OAA and AB programs.

53.

Since 1963 the monetary appropriations by the Legislature of the State of Texas to the OAA, AB, AFDC and APTD programs have increased the monetary expenditures in such programs by the following percentages:

OAA	—	13%
AB	—	0%
AFDC	—	58%
APTD	—	183%

53a.

That since 1964 the number of persons receiving public assistance grants from the State of Texas in the OAA and AFDC programs has increased by the following percentages:

OAA	—	.024%
AFDC	—	62.7 %

54.

That the Legislature of the State of Texas has never reduced the amount of money appropriated to the OAA, AB, AFDC or APTD programs.

55.

That the Legislature of the State of Texas has always appropriated an amount equal to or in excess of that appropriated by the previous Legislature to the OAA, AB, AFDC and APTD programs.

56.

That under Art. III, Sec. 51-a of the Texas Constitution, any increase in the amount of money presently being appropriated by the Legislature of the State of Texas to the AFDC program would result in the amount of

money available in the OAA, AB and APTD programs being reduced.

57.

That the large majority of recipients in OAA, APTD, and AB get the full "unmet" needs met by welfare grants within the maximums for those programs as reflected by the following table:

Program	%age of "unmet Needs" Met Within Adult Maximums
OAA	91.8% of all recipients
APTD	74.4%
AB	72.4%

58.

That in August 1968, only 43.6% of AFDC recipients had their full "unmet" needs met by their welfare grants.

That in September, 1968, only AFDC maximum grants were reduced by $12 across the board, resulting in a further reduction of the 43.6% of AFDC recipients whose full "unmet need" was being met by their welfare grants in August, 1968.

59.

That under defendants' 50% reduction plan for AFDC, it is now impossible for any AFDC recipient to have more than half of his unmet budgetary needs by the welfare grant.

60.

That the following table accurately states the overall effect on AFDC checks of the defendants' Fifty Percent System as set out in Administrative Orders E-430 and E-434.

Effect of 50% System	Number of Families
Checks reduced	22,812
Checks increased or remaining the same	Approximately 14,000
Grants entirely eliminated	2,470

Source: Defendant Hackney's Deposition, p. 126.

61.

That defendants have calculated that "needs" standards have risen 11% in AFDC since they were last set, and they have raised "needs" standards for all programs, but in the adult programs by less than 11%.

62.

That the majority of AFDC recipients as of May 1, 1969, receive a smaller grant than they did on January 2, 1968.

63.

That the need requirements as recognized by the State Department of Public Welfare in its budgetary procedures as contained in E-430 and E-434 which consists of subsistence needs (eg. food, clothing, rent, utility, drugs, etc.) which the State Department of Public Welfare recognizes as items necessary to maintain a minimum standard of health and decency are identical for the four types of categorical assistance, (Aid To Families With Dependent Children, Aid To The Blind, Aid To The Permanently And Totally Disabled, and Old Age Assistance).

64.

That prior to February 1, 1969, "in the AFDC program, a mother who is able to work and refuses a job offer without good cause, loses her welfare benefits, as will an older child who is not in school."

65.

That "the earnings of children under fourteen in the AFDC are so negligible that the United States Department of Health, Education and Welfare has directed the States to make no inquiry whatsoever into such earnings."

66.

That "outside income", i.e., income the recipient receives from sources other than State Welfare, are subtracted from the calculated state standard of need, before

the recipients actual welfare grant is determined; that in AFDC the recipients state standard of need, once determined is then divided in half and then the non-exempt "outside income" is subtracted in determining the recipients actual welfare grant.

67.

That any known support actually received from an absent father or other legally liable relative of a recipient child is automatically subtracted from the State's standard of need before an AFDC grant is determined.

68.

The 50% reduction factor applied to the AFDC program; the 95% reduction factor applied to the AB program; the 95% reduction factor applied to the APTD program were necessary if the Texas State Department of Public Welfare was to operate the AFDC, AB and AP TD programs within those appropriation limits for each category as set by the Legislature for the fiscal year ending August 31, 1969.

69.

The plan initiated by the Texas Department of Public Welfare, effective May 1, 1969, pursuant to Executive Letter 430, had as its primary purpose the establishment of a simplified budgeting procedure.

70.

The percentage control factor or percentage reduction factor set forth in Executive Letter 434 was necessary for the Texas Department of Public Welfare to operate the AB, AFDC and APTD programs within the amount of money appropriated for each category by the Legislature of the State of Texas for the fiscal year ending August 31, 1969.

71.

An alternative considered by defendants by Executive Letter 434 would have been an across-the-board cut of AFDC assistance grants by approximately $28.00.

72.

That during the month of January, 1969, the State Legislature, at the request of the defendant, Burton G. Hackney, authorized transfer of approximately $350,000 from funds appropriated from other assistance categories to the Aid To Families With Dependent Children category.

73.

The actual amount expended by the Texas Department of Public Welfare for assistance grants in the AFDC program for the State fiscal year September 1, 1968, to August 31, 1969, will be approximately $6,500,000.00.

74.

Since September of 1967 the number of recipients receiving AFDC assistance grants in Texas has increased at the rate of approximately 3,000 per month.

75.

Under present plans, if the constitutional amendment to be submitted to the voters of the State of Texas in August of 1969 which would authorize the Legislature to appropriate up to $80,000,000.00 for assistance grants in the OAA, AB, APTD and AFDC programs, is adopted, the appropriation for operation of the AFDC program commencing September 1, 1969, will be increased by an additional $11,900,000.00 making a total of $18,000,000.00, and AFDC recipients could then be paid 100% of recognized need.

76.

Pursuant to the proposed appropriation, the AFDC program would receive $11,900,000.00 of the $15,000,000.00 in additional funds available to operate the OAA, AB, APTD and AFDC program.

77.

32.5% of the AFDC family units have mothers with earned income and 15.1% of the AFDC family units re-

ceive contributions from the father. Of all OAA recipients (in May, 1968), 54.7% were receiving Social Security payments. These OAA recipients received an average grant of $57.98, the major part of their standard of need as calculated by Texas.

78.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 138,942 people in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

79.

That if the relief sought by the plaintiff is granted it could result in the assistance grants of approximately 249,760 people in the OAA, AB and APTD program being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

80.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 117,933 Negro and Mexican-Americans in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

80a.

That plaintiffs also request relief from the State's Constitutional and Statutory restrictions on appropriations to all of the categories.

81.

That if the relief sought by the plaintiff is granted it could result in the assistance grants of approximately

95,360 Negro and Mexican-Americans in the OAA, AB and APTD programs being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

81a.

Same Stipulation as 80a.

82.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 61,968 Negroes in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

82a.

Same Stipulation as 80a.

83.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 56,107 Negroes in the OAA, AB and APTD programs being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

83a.

Same Stipulation as 80a.

84.

Omitted.

85.

That the basic principle of all the public assistance programs is that of relieving individual unmet need which is determined by subtracting available income from the state-determined "standard of need."

86.

That approximately one child in four receiving AFDC is illegitimate.

87.

That the fathers of approximately one-fourth of the children receiving AFDC are incapacitated, in prison, or dead.

88.

No Stipulation.

89.

No Stipulation.

90.

That about ½ of the caretakers are too uneducated or handicapped to hold even the lowest-paying jobs.

91.

No Stipulation.

92.

That if the August Amendment which will raise the welfare ceiling fails to pass, AFDC grants could drop to $6.25 per month per child by the end of the next biennium dependent upon the continuous increase in the rolls.

93.

No Stipulation.

94.

That approximately 86% of the welfare expenditures for public assistance from State and Federal funds in Texas for the fiscal year ending August 31, 1968, including medical assistance, go to OAA, AB and APTD.

95.

That approximately 10% of the present state expenditures for public assistance excluding medical assistance, go to the AFDC program. This 10% goes to children who are too young to work but need help in growing up.

These children need help through education and a more wholesome environment, so they will have a better chance of reaching adulthood with the preparation to become productive citizens.

96.

That AFDC children need public assistance because they have been deprived of parental support by the death, or absence, or incapacity of a parent.

97.

That proper food and education are vital for children receiving AFDC. The younger the child receiving AFDC the more it would benefit from the help the state can provide through AFDC.

98.

That when a child receiving assistance reaches school age much of what the State Welfare Department can offer comes too late. Children receiving State Welfare grants need state help as toddlers through proper nutrition and environment so they will be ready for school when they get there.

That Joinder of all members of the class of persons receiving maximum grants February 12, 1969, before this Court is impracticable.

100.

That the Joinder of all persons who receive AFDC before the Court is impracticable.

84. (out of numerical sequence)

That the following three examples comparing benefits under AFDC and under the OAA program are accurate Public Assistance budgets under the hypothetical given:

Example #A

Old Plan (prior to May 1, 1969)

This chart illustrates the allowable needs and payable benefits as computed by the State Department of Public

Welfare prior to May 1, 1969, as applied to an OAA recipient with one dependent minor child and as applied to an AFDC recipient with one dependent minor childs. It is assumed in this example that both the OAA recipient and the AFDC recipient have $50.00 per month outside income, the OAA recipient receiving $50.00 per month from Social Security and the AFDC recipient receiving $50.00 from child support.

	OAA	AFDC	
Adult's Personal Needs	$ 45.00	$ 45.00	
Child's Personal Needs	21.00	21.00	
Housing	38.00	38.00	
Special Needs	15.50	2.00	
TOTAL ALLOWABLE NEEDS	$119.50	$106.00	
Outside Income (Social Security deducted with $5.00 credit)	(45.00)	(50.00)	(Child Support Deducted)
TOTAL PAYABLE	$ 74.00	$ 56.00	

Benefits

Example #B

New Plan (after May 1, 1969)

This chart illustrates the allowable needs and payable benefits as computed by the State Department of Public Welfare after May 1, 1969, as applied to an OAA recipient with one dependent minor child and as applied to an AFDC recipient with one dependent minor child. It is assumed in this example that both the OAA recipient and the AFDC recipient each has $50.00 per month outside income, the OAA recipient receiving $50.00 per month from Social Sceurity and the AFDC recipient receiving $50.00 per month from child support.

	OAA	AFDC	
Adult's Personal Needs	$ 65.00	$ 65.00	
Child's (or Children's) Personal Needs	25.00	75.00	
Housing	42.00	42.00	
TOTAL ALLOWABLE NEEDS	$132.00	$182.00	
50% reduction Applicable to AFDC only		91.00	
	$132.00	$ 91.00	
Outside Income Social Security deducted with $5.00 credit	(45.00)	(50.00)	(Child Support Deducted)
TOTAL PAYABLE Benefits	$87.00	$ 41.00	

That "there are people who qualify for Aged or Blind or Disabled assistance who are employed, just as there are some mothers and children in the AFDC program who are employed. A majority in all programs are unemployed. Thirty-two and one-half percent of the AFDC mothers in Texas have earned income, while 2.8% of OAA, 8.6% of AB and 3.36% of APTD have earned income because of 'physical and mental reason' or because 'there is no work available, they have no marketable skills or they are needed in the home.' "

STATE DEPARTMENT OF PUBLIC WELFARE

OFFICE MEMORANDUM

July 26, 1968

To: All Field Staff

FROM: Burton G. Hackney
Commissioner
State Office

E-417

SUBJECT: Lowering of AFDC Maximums Effective September 1, 1968

At the Regional Directors' and Supervisors' meeting held in Austin the week of July 15 we discussed some of the problems which have arisen due to the shortage of AFDC funds created by increases in the AFDC rolls, which will be further increased by the recent ruling of the United States Supreme Court in the case of King vs. Smith. (A separate E-Letter containing the specifics of this decision and the change in the stable relationship policy will be released when final clearance is received from HEW.)

The AFDC rolls in Texas have been increasing over the last number of months at a level of about 3,000 children per month. The Department has been able to handle this increase within the appropriated amounts, but it is anticipated that the rolls will further increase another 15 to 25% as a direct result of the Supreme Court ruling on the "man-in-the-home" policy. In addition, there is another suit pending on the residence requirement and there is a possibility that we may have to pay retroactive payments on certain residence cases.

In the meeting, I advised the Regional Directors and Supervisors that we had been informed by the Department of Health, Education, and Welfare that the Department's plan to "pro-rate" grants in the manner which had been used in past years was unacceptable to HEW and could not be done.

After considering several methods of conserving AFDC funds and studying the various problems involved in each plan, it was decided by the executive office and the various divisions involved that the Department will bring its expenditures within the limits of present appropriations by reducing the maximum grants in the AFDC program. The Department deeply regrets having to make this retrenchment in the AFDC program, but, as you know, our maximum assistance funds are limited by Constitutional provisions and the special session of the Legislature had no means of adjusting AFDC funds of $6,150,000 upward since the Constitutional limitation of $60,000,000 each state fiscal year for assistance programs had already been completely appropriated.

In order to have AFDC funds available for the remainder of this biennium (and such funds must be spread among a much larger group of recipients), it is necessary to lower each AFDC maximum grant by $12.

Effective September 1, 1968, the new AFDC maximum grants will be as follows:

No. of Children Certified	Without Caretaker		With Caretaker	
	Present Maximum	New Maximum	Present Maximum	New Maximum
1	$ 46.00	$ 34.00	$ 72.00	$ 60.00
2	67.00	55.00	93.00	81.00
3	88.00	76.00	114.00	102.00
4	109.00	97.00	135.00	123.00
5 or more	130.00	118.00	135.00	123.00

A notice will be included with each August AFDC warrant notifying AFDC recipients of the lowering of the maximum grants effective September 1, 1968. The notice will read as follows:

TO ALL AFDC RECIPIENTS: August 1, 1968

Due to increasing numbers of persons ruled eligible to receive Aid to Families with Dependent Children, the

funds available are inadequate to continue AFDC payments at the present level.

You are hereby notified that the maximum grants in the AFDC program will be lowered to the following amounts effective September 1, 1968:

No. of Children Certified	Without Caretaker	With Caretaker
1	$ 34.00	$ 60.00
2	55.00	81.00
3	76.00	102.00
4	97.00	123.00
5 or more	118.00	123.00

If you are now receiving a grant more than the amount shown above for the number of certified children in your family, your AFDC payment will be lowered to the amount shown above, beginning with the check you receive around September 1.

STATE DEPARTMENT OF PUBLIC WELFARE

The September warrants will be lowered in the State Office for all cases which are now receiving a maximum grant. The Form 1-B printouts which you will receive around August 1 will reflect the lowered maximums on such cases and the Form 1-B will show a September 1 effective date. All August warrants will be written using the old maximums.

NOTE: Some AFDC cases on the master file do not have all certified persons listed in Section II, Dependent Group. In these cases, the number of certified persons from the old Form 1 will be used to adjust the grant. During the August review in AFDC, please pay special attention to the number of certified persons in the Dependent Group Section as it relates to the amount of the recommended grant. Adjustments must be made before August 23, 1968, to be effective for the September warrant.

Any AFDC grants certified during the month of August for an August payment should show the current maximums and these will be automatically lowered in September. Therefore, any Forms 1-A which are to be received in the State Office on or before August 30 should reflect the *old* maximums. Any Forms 1-B submitted after August 1 for adjustments to be effective September 1 should reflect the new maximums.

Please write in these new AFDC maximum grants on your current Form 36. The Form 36 will be revised within a short time and at that time the new maximums will be reflected in the revised Form 36.

These new maximums will be in effect until further notice.

SPECIAL ALLOWANCES WHICH EXCEED NEW MAXIMUMS

All special allowances included in *AFDC* grants which would exceed the *new maximum* when added to the Recommended Grant entered in Item 25 of the budget will be deleted by ADP in the revised Form 1-B printout to be received around August 1. For these cases, the worker should recompute the budget and if a portion of the special allowance can be included without exceeding the new maximum, the worker should submit the Form 1-B showing the new special allowances. The Form 1-B must be submitted prior to August 23 to be effective for the September warrant.

/s/ Burton G. Hackney
BURTON G. HACKNEY

BGH:dcb

Distribution:
Division Heads
Regional Directors (PA & CW)
Supervisors (PA & CW)
Workers (PA & CW)

STATE DEPARTMENT OF PUBLIC WELFARE

OFFICE MEMORANDUM

February 28, 1969

TO: All Field Staff

FROM: Burton G. Hackney
Commissioner
State Office

E-430

SUBJECT: Conversion To New Method of Budgeting Assistance Grants May 1, 1969

Many of you have received some advance information concerning the proposed changes in procedures for budgeting of assistance grants which have been under intensive study for several weeks. This E-Letter, which sets forth the new policies, should be studied in preparation for meetings which will be conducted during the next week to give further interpretation and explanation of these changes.

There have been several major factors involved in the decisions concerning the change in budgeting procedures. First of all, a plan which would standardize more of the budgetary entries for items of need and consolidate several of the previous budgetary allowances has been under consideration for several months. Two significant budgeting changes are made mandatory by Federal requirements effective July 1, 1969. These are the special AFDC earned income exemptions and the requirements that budgetary allowances must be increased to meet the cost of living increases in each particular state. Another factor, which required urgent attention, was the problem of distributing AFDC funds among a greater and ever-increasing number of recipients without having to again lower the AFDC maximums as was necessary last September.

Rather than implementing these various changes on a "piecemeal" basis during the next several months, it

seems more practical to undertake a revision of our budgeting procedures that will accomplish these several required changes at the same time. Therefore, the following changes in budgeting procedures will be effective May 1, 1969:

1. Standard budgetary allowances and standard work-related expense allowance for all categories
2. Cost of living adjustments
3. Special AFDC earned income exemption
4. Percentages of needs payment method
5. Removal of maximum grant limitation in AFDC
6. Minimum grant of $1 in all categories

Due to the needed changes and mandatory requirements, most AFDC cases will be converted to the new budgeting procedures in the State Office effective May 1, 1969. *The adult categories will be converted on an "as reviewed" basis.* All Forms 1-B submitted on OAA, AB or APTD cases to be effective on or after May 1, 1969, *must* contain the new budget information using the new budgeting procedures.

It is anticipated that there will be a large number of AFDC cases which will be affected by the new changes in the method of budgeting. Many grants will be lowered or denied and a significant number of grants will be raised. Some localities have already had preliminary meetings with members of the community and it is expected that group meetings will be held in each locality to make appropriate interpretation of these program changes to members of the community and AFDC recipients. At the meetings which have been held with community groups, the reception to the new budgeting principles has been good and, on the whole, most of the interested individuals and recipients in attendance have indicated that they believe that the new budgeting principles will achieve a more equitable distribution of available funds.

The projections of the effects of the new budgeting procedures *in the adult categories* indicate that *only a small proportion of cases will be lowered.* The effects of

the new budgeting procedures will be further minimized by the fact that in the adult categories the new budgeting procedures will be applied only as cases are reviewed. In the adult categories *no* automatic conversion and *no* desk review will be necessary.

The changes in budgeting principles, in brief, are as follows:

1. *Standard budgetary allowances and standard work-related expense allowance for all categories*—Effective May 1, a standard composite figure for needs for each adult and each child applicable to all categories will be adopted. Many of the allowances known as "special allowances" and "other allowances" will be eliminated as individual budgeted amounts as they are now included in the "Personal Needs Allowance." This new budgeting method involves the grouping of various items into the "personal needs" figure, including food, clothing and incidentals (incidentals are considered to include such expenses as telephone, laundry, transportation, hearing aid upkeep, personal insurance premiums, diabetic supplies, SMIB premiums for ineligible spouse over 65, home remedies, recreation, household equipment and supplies, etc.). The consolidation of these items into the personal needs item will eliminate the necessity of evaluating and verifying certain items. The incorporation of these items into the personal needs figure will eliminate the following items from the budget on Forms 1-A and 1-B:

   Special Needs—Items 12 and 32
   Transportation—Items 16 and 36
   Laundry—Items 17 and 37
   Telephone—Items 18 and 38

Also, the present Base Plans 6A, 6B and 7 will be consolidated and standardized into one base plan, Plan 6.

The new Personal Needs amounts will be as follows:

Plan 13

Adult Recipient	$65
Adult Non-recipient, adult essential person, child 18-21	$39
Child under 18	$25

Plan 6
(formerly Plan 6A, 6B and 7)

Adult Recipient	$125
Adult Non-recipient, adult essential person	$125

Plan 9

Adult Recipient	$21

Plans 10, 11, 12, 14, 15, 16 and 17

Adult Recipient	$21
AFDC child in State School for Mentally Retarded (Plan 16)	$ 8

Housing has been reviewed and the new housing amounts will be as follows:

Rented quarters—Public, including utilities

1 person	$36
2-4 persons	$42
5 or more persons	$49

Rented quarters—Private (as paid up to)

1-2 persons	$33
3-4 persons	$44
5 or more persons	$50
Utilities	$13

Owned quarters—Private (as paid up to)

1-2 persons	$33
3-4 persons	$44
5 or more persons	$50
Utilities	$13

The present policies concerning the distribution and prorating of shelter and utilities will remain the same. Only the amounts have been changed.

Other Allowances—Items 20 and 40

All "other" allowances have been deleted with the exception of "Cost of Care for a Seeing Eye Dog". This is the *only* "other" allowance that will be accepted on Forms 1-A/1-B effective for May 1, 1969.

Special Allowances—Item 90

Effective May 1, 1969, in all categories the only special allowances and codes to be retained are as follows:

121—glasses
122—dentures
123—hearing aid (does not include hearing aid upkeep)
124—shelter repair

In the adult categories, special allowances now included in Item 90 will be retained until the original plan as initiated has been consummated. In AFDC, the remaining amount of any special allowance now included in the grant will be reduced by the AFDC percentage reduction factor and the remainder will be included in the May warrant.

As an ongoing procedure for all categories, the worker is to enter the actual special allowance amount which will be reduced in ADP by applying the percentage reduction factor with the remainder to be paid in one payment for AFDC or pro-rated over the appropriate number of months in the adult categories because of the maximum grant limitations.

Standard Work-Related Expense Allowance

A standard work-related expense allowance has been adopted for all categories. The standard allowance is $28 for a full-time employee (i.e., more than 20 hours per week) and $14 for a half-time employee (i.e., 20 hours or less per week). This allowance covers all work-related expenses except child care. The $28 and/or $14 allowance covers withholding tax, social security, special clothing, insurance, lunches, transportation, and the old chart

allowance for employed persons. The worker will no longer be required to compute actual expenses relative to employment but instead will deduct the standard allowance from gross income. (See special rules for AFDC and AB earned income exemptions.)

Use Present Form 1-A and Form 1-B Until Revised

Due to time limitations, it is impossible to design and order forms for the revised budgeting system. This and the fact that budgeting may be further revised in the near future have contributed to the decision to use the present Forms 1-A and 1-B. This will involve using certain items in the budget for purposes other than what is printed on the form and deletion of other items.

The new budget will be composed of the following:

Personal needs—Items 11 and 31
Housing—Items 13 and 33
Utilities—Items 14 and 34
Prescribed Drugs—Items 60 and 60
Social Care—Items 15 and 35
Professional Care—Items 70 and 70
Other—Items 20 and 40
Total Needs (presently "other")—Items 21 and 41
Recognizable needs (presently "Total Needs")—Items 22 and 42
Net Income—Items 23 and 43
Unmet needs—Items 24 and 44

More specific details concerning the new budgeting method will be released about the middle of March.

Cost of living adjustment—Approximately an 11% cost of living adjustment has been applied as can be noted from the above figures. This was done on all individual items included under the "old" budgeting process before they were combined into the new budgetary items. This is based on the rise in living costs since the last adjustment was made for food, clothing, shelter, utilities, and incidentals.

3. *Special AFDC Earned Income Execption Policy*—This policy involves the exempting of certain portions of income earned by AFDC recipients and members of their dependent group. HEW requires the *exemption* of the first $30 and one-third of the remainder of *earned* income in AFDC. (The earned income *exemption* in AFDC must not be confused with the standard work-related expense allowance of $28 or $14 which applies to all categories.) This procedure is mandatory by HEW regulation July 1, 1969. The Department is implementing this policy effective May 1, 1969, to encourage employment of AFDC members.

   The following procedure will be used for the special AFDC earned income exemption for AFDC *recipients*:

   A. Combine *gross* earned income (i.e., total earned income before *any* deductions) of all members of AFDC dependent group, except that all earned income of any child under 21 in the AFDC dependent group (Status Code 4 and/or 5) is excluded *if* the child is a full-time student or is a part-time student who is not a full-time employee.
   B. Deduct $30 from the gross earned income figure.
   C. Deduct one-third of the remainder.
   D. Deduct the standard work-related expense allowance for *each* employed person.
   E. Deduct any child care expense from the remainder to arrive at the *net earned income* to be combined with other income (such as Social Security) and applied to the recipients' recognizable needs.

   An *applicant* for AFDC (who has not been a recipient within the past four months) is *not* entitled to the special AFDC earned income exemption (i.e., $30 plus one-third of the remainder of gross earned income) *unless* budgetable needs exceed net income *without* application of the special exemption policy. For example, AFDC applicants with earned income must first meet the definition of need with only the standard allowances (i.e., standard work-related expense allowance and child

care, if any) being deducted from earned income. Then, if eligible for AFDC on the basis of need, they are entitled to the special AFDC earned income exemption which will require re-computing the net earned income.

4. *Percentage of needs payment method*—Generally, this new budgeting concept will involve the following:

   A. Determine need using the same allowances for all categories, as explained earlier. (In most cases, needs will be limited to a standard allowance for each adult and each child; allowances for shelter and utilities; and actual cost of prescribed drugs, if any.)

   B. Multiply total needs by a pre-determined percentage to arrive at the percentage of needs the Department can meet. (The percentage for each category will be determined by State Office on the basis of the number of recipients and the amount of funds available for each category.) The use of a percentage for determining recognizable needs would apply any reduction in grants to all cases in a category rather than lowering only those who are receiving a maximum grant. The percentage can be adjusted up or down according to the amount of funds available, although it is anticipated that it will not vary any more than maximum grants have varied in the past.

   C. After the percentage is applied to the total needs to arrive at "recognizable needs", the amount of net income (if any) will be deducted to derive the amount of grant.

   In the great majority of cases, Steps "B" and "C" will be performed by the computer. In most individual and companion cases, the worker will enter only the needs and income items in the budget and the computer will run the total, apply the appropriate percentage, and deduct net income to determine amount of grant. (The Form 1-B returned to the worker will show these amounts.) In combination

cases and nursing home cases, the worker will continue to allocate income and determine amount of grant and vendor rate. Detailed instructions concerning the new budget entries will be sent to the field staff about the middle of March.

As soon as the percentages of need which can be recognized are officially approved, the field staff will be notified of the percentages.

5. *Removal of Maximum Grant Limitation in AFDC*—The amount of grant in AFDC will no longer have an arbitrary limitation in terms of dollar maximum or family size. A proportional share of needs of each certified child will be included in the grant.

   The current maximum grant limitations for OAA, AB and APTD remain in effect.

6. *Minimum Grant of $1 in all Categories*—Effective May 1, 1969, the minimum grant in all categories will be $1.00.

CONVERSION

Field Re-computation of AFDC Earned Income

In order for AFDC individual cases with earned income to be automatically converted in ADP to the new budgeting procedure by May 1, the field staff must re-compute net earned income according to the new policy in AFDC (outlined earlier in this directive). The following schedule outlines the procedures to be used for AFDC individual cases having earned income:

March 7—ADP will mail to the field staff "Net Earned Income Cards". These cards will be printed for each AFDC case with *earned* income, except combination and combination-companion cases. (The procedure for handling these cases is detailed later in this directive.) These cards will notify the workers that net income must be re-computed. The cards will also be used to send this information to State Office.

When "Net Earned Income Cards" are received, the field staff must:

(1) Determine *gross* income (*total* pay before any deductions are made by the employer)
(2) Net the earned income using the *new* AFDC Income Exemption Policy
(3) Enter on the card the amount of the income, *if any*, which remains after the new exemptions are applied.

If there is no net earned income remaining, a "zero" must be entered and the card *must* be returned to ADP.

By March 17—"Net Earned Income Cards" must be returned to ADP.

Upon receipt of the "Net Earned Income Cards", ADP will:

(1) Combine the amount of net earned income as shown on the card with other income for each of these cases to arrive at the amount of total income
(2) Re-compute the budget using the new budgeting procedure
(3) Apply the AFDC percentage to the total needs to arrive at the recognizable needs
(4) Subtract the total amount of income from recognizable needs to arrive at the new amount of grant to be effective *May 1.*

Note: For cases where the "Net Earned Income Cards" are not received, ADP will use the old amount of net earned income that is presently shown on Form 1-B in Item 80, Line 4, "Net Earned Income" to compute the new budgets for May 1.

No-Processing Period for AFDC Forms 1-B

There will be a no-processing period for Forms 1-B on *AFDC* cases beginning March 24, 1969. (Forms 1-B received in ADP before 5 p.m., March 21, will be processed.) Forms 1-B submittal should not resume until a Form 1-B printout or a special card, "Case Review Card", is received. (Cards will be mailed from State Office around April 4 on combination and combination-com-

panion cases which are to be field reviewed.) AFDC *Forms 1-B* submitted to ADP after the no-processing period must reflect the *new budgeting procedures* as they will be effective May 1, 1969.

No-Processing Period for AFDC Forms 1-A

There will be a no-processing period for Forms 1-A on AFDC cases beginning at 5 p.m., April 23 and extending through April 30. Submittal of AFDC Forms 1-A may resume on May 1, 1969. All AFDC Forms 1-A submitted after the no-processing period must reflect the new budgeting procedures. Workers should make every effort to complete AFDC applications prior to the no-processing period so that the recipient might benefit from an April warrant. AFDC Forms 1-A submitted during April *prior to the April cut-off date* must reflect the *old budgeting procedure* as they will be effective for April, 1969. If such forms contain an entry for earned income, a memo *must* be attached to the Form 1-A stating the amount of net earned income to be considered effective May 1 in accordance with the new AFDC earned income exemption.

Dates for Use of New Budgeting Procedures for OAA, AB and APTD

Forms 1-B for OAA, AB and APTD cases submitted to ADP to be received after March 21 must reflect the *new budgeting procedures* as they will be effective May 1, 1969.

Forms 1-A on OAA, AB and APTD which are received in ADP on or after May 1, 1969, must reflect the new budgeting procedures.

The no-processing period is not applicable to OAA, AB and APTD.

Field Must Review Combination and Combination-Companion Cases (AFDC and adult grant(s) in same dependent group, as defined in Form 1-A instructions)

The new budgeting procedure leaves latitude to the worker in the distribution of income and housing between

the AFDC budget and the adult budget in combination and combination-companion cases as has been the policy in the past. Therefore, the worker will need to review these cases to effectively apply this policy whereby the recipient will gain maximum use of agency funds. Each worker will be notified of combination cases which need to be reivewed by a special case review card, which will be mailed to the field shortly after April 1, 1969. These cases (both the adult and AFDC case) must be reviewed during the April certification period using the new budgeting procedure and Forms 1-B must be submitted with new budget information to be received in ADP by 5 p.m., April 23. May warrants will be held on any of these cases on which Forms 1-B are not returned by April 23. A separate E-Letter detailing the method of budgeting combination cases will be sent to the field staff before the case review cards are mailed from State Office. *It will be the responsibility of the individual worker to notify in writing each recipient involved in the combination and combination-companion case review of the grant adjustment(s).*

For combination and combination-companion cases certified in April, it will be the worker's responsibility to adjust these grants to reflect the new budgeting procedures as soon as the Form 1-B is received. The May warrants on these cases will be held until the Forms 1-B adjusting the grants are received.

Notices to AFDC Recipients

All individual AFDC cases (that is, all AFDC cases except combination and combination-companion) will be notified by ADP in a special notice to be mailed with the April warrant. This notice will advise each recipient of the amount of grant (or denial) which will be effective May 1, 1969. If a case is reviewed and the amount to be received is different from that reflected in the special notice sent from the State Office, the worker will be held responsible for the interpretation of the reason for the change and for notifying the recipient of the new amount of grant for May 1.

Applicable Policy Changes

All sections of the Financial Services Handbook, Forms Manual, Medical Care Manual, Forms 1-A/1-B Instructions, or any other policy material in conflict with this E-Letter are hereby superseded. All items of Forms 1-A/1-B instructions and policy material not in conflict with this E-Letter remain in effect. Revised policy material and instructions will be forthcoming as soon as the proper revisions can be drafted and distributed.

Meetings of Field Staff

Orientation for application of these new policies will begin on March 4 with Regional Directors in Austin. The Regional Directors will then have March 5 and 6 to orient supervisors who will in turn hold meetings on March 7 and 10 to orient workers.

/s/ Burton G. Hackney
BURTON G. HACKNEY

BGH:dcb

STATE DEPARTMENT OF PUBLIC WELFARE

OFFICE MEMORANDUM

March 13, 1969

To: All Field Staff

FROM: Burton G. Hackney
Commissioner
State Office

E-434

SUBJECT: Percentage of Needs Payment Method

As explained in E-430, effective May 1, 1969, a percentage payment method will be used to determine the amount of needs the Department can meet based upon the amount of available assistance funds and the number of recipients in each category.

The percentages of needs the Department can meet as of May 1, 1969, have been officially approved as follows:

OAA	100%
APTD	95%
AB	95%
AFDC	50%

As can be noted, the Department can meet 95% of the budgetable needs of APTD and AB recipients. It is to be emphasized that this is not proration but is an administrative procedure employed to prevent over expenditure of funds that would otherwise have resulted when standardized allowances were established for all categories. These new standard allowances included some increases which otherwise would not have been given. The percentage control factor has been calculated so as to maintain over-all expenditures in AB and APTD funds at present levels. These new standard allowances ($65 for personal needs for each adult recipient, increased housing, etc.)

could not be given in all categories without the application of the percentage control. Very few AB and APTD grants will be lowered under the new procedure, and an offsetting number of cases will be raised. The Department continues to administer these two categories at the same rate of expenditure as before. A substantial number of OAA cases will be raised under the new method and new allowances. Maximum grants, however, will continue to apply in the adult categories (OAA, APTD, AB).

The percentages listed above should be applied by the field staff in determining amounts of grants for combination, companion-combination, institutional and nursing home cases. For individual and companion cases, these percentages will be applied in State Office to determine amounts of grants. In companion cases where two categories of different percentage rates are involved, an average percentage will be applied to the amount of total budgetable needs to determine the amount of recognizable need. For example, if one person is an OAA recipient and the companion is an AB or APTD recipient, the percentage that will be applied to the total needs budget will be 97.5%, which is the average percentage of 100% and 95%. The average percentage will be applied in State Office for companion cases.

The percentage payment method *does not* apply to vendor payments. These amounts will continue to be paid at the same rate.

The percentages listed in this E-letter will continue to be in effect until it is necessary to make adjustments due to the number of recipients and/or the amount of available funds. When any adjustments are to be made, advance notification will be given by E-letter.

/s/ Burton G. Hackney
BURTON G. HACKNEY

BGH:dcb

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET. AL.

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

JUDGMENT—July 1, 1969

This action came on for hearing on Defendant's motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed on Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges.

After considering the motion to dismiss Ruth Jefferson the Court finds that at the time this case was filed on February 12, 1969 Ruth Jefferson was a recipient of the AFDC benefits and was at that time a proper party plaintiff and representative of the class of individuals receiving AFDC benefits; the Court further finds that Ruth Jefferson has not been removed from the AFDC rolls and is therefore a proper party plaintiff and is representative of the class of individuals receiving AFDC benefits.

It is therefore ORDERED, ADJUDGED and DECREED that Defendant's motion to dismiss Ruth Jefferson as a party plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party plaintiff.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed herein

and the argument of counsel IT IS ORDERED, ADJUDGED and DECREED:

1. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

2. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

3. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

4. The Texas state-wide plan known as E-430 and E-434 effective May 1, 1969 violates the requirements established by the Congressional Amendment 42 U.S. C.A. 402 (a) (23) to the AFDC program and is null and void.

5. Defendants are permanently enjoined from enforcing the Texas plan E-430 and E-434 providing for payments to recipients of AFDC and from receiving funds from the federal government until such time as a plan is formulated which carries out the provisions of 42 U.S.C.A. 402 (a) (23).

It is further ORDERED, ADJUDGED and DECREED that the injunction herein granted is stayed for 60 days from date hereof in order to give the Texas Legislature

an opportunity to implement a plan which will conform to the requirements of 42 U.S.C.A. 402 (a) (23).

In due time an opinion will be handed down.

Dated this 1st day of July, 1969.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

OPINION—Filed July 31, 1969

Before GOLDBERG, Circuit Judge, and HUGHES and TAYLOR, District Judges.

PER CURIAM:

There are here involved two similar cases. The defendants in both cases are Burton G. Hackney, Commissioner of Public Welfare of the State of Texas, certain members of the State Board of Welfare and certain officials of the State Department of Public Welfare. In one case the Plaintiffs are Maria T. Davila and No Ann Guttierrez and in the other Ruth Jefferson, Emma Gipson and Jose Apalinor Vasquez. Plaintiffs sue individually, on behalf of their minor children, and on behalf of all other parents, relatives or minor children similarly situated.

Prior to September 1, 1968, the Texas State Department of Public Welfare, hereinafter referred to as Department, had maximum limits for recipients of Aid to Families with Dependent Children (AFDC) depending on the number of children in the family. Effective Septem-

ber 1, 1968, the Department reduced each such maximum across the Board by an amount of $12.00. The original suit filed by Jefferson, et al, sought to have that decision held void and to restrain the Department from making any future and similar cuts.

On March 9, 1969, the Department announced the implementation of a new plan E-430 and E-434 to be effective May 1, 1969, under which the grants to AFDC recipients were reduced 50%. There was no reduction in any other welfare program.

As a result of this action by the Department, Davila and Gutierrez filed their action in the Western District of Texas seeking: (1) a declaratory judgment voiding that part of the new regulation reducing the AFDC grants, and (2) an injunction to restrain the implementation of the regulation which restricts the amount of assistance for AFDC recipients to a percentage of unmet budgetary need which is less than that granted to recipients in other categories, and (3) an injunction prohibiting payments of assistance less than the unmet budgetary needs. Jefferson, et al, amended their complaint which had been filed in the Northern District to seek similar relief. On motion of the defendants the two actions were consolidated in the Northern District of Texas.

At the beginning of the hearing on the merits, a motion was filed by the defendants to dismiss Ruth Jefferson as a party plaintiff for the reason that she was not a needy person eligible to receive AFDC benefits nor was she representative of the class of individuals receiving AFDC benefits.

It appears that the parties stipulated that Ruth Jefferson was the mother of five children who live with her at her place of residence, that she and her children have no regular income, resources, support or maintenance other than the $120.00 per month public assistance payments and agricultural commodities received from the U. S. Department of Agriculture. She also receives spasmodic assistance in the form of money from the Orleans Fund and has worked on brief occasions. (Stipulation No. 3). In her deposition taken on April 23, 1969, Ruth Jefferson testified that she was receiving AFDC benefits at

the time this suit was filed (February 12, 1969) and is presently still receiving them. At the hearing on July 1, 1969, it was admitted by defendants that she had not been removed from the AFDC rolls.

It is our opinion that under these circumstances Ruth Jefferson is a proper party plaintiff and representative of the class of persons receiving AFDC benefits. The motion to dismiss is denied.

This Court does not pass on the eligibility of Ruth Jefferson to receive AFDC benefits. That matter is within the jurisdiction of the State Department of Public Welfare and we leave it to the Department for its determination.

Before discussing the issues in this case we will next briefly review the relevant federal and state welfare provisions.

I.

HISTORY

In 1935 Congress provided for various categories of Public Welfare.[1] Under the Old Age Assistance (OAA) program, as presently constituted, grants are authorized "for the purpose of enabling each State to furnish financial assistance to needy individuals—(and) medical assistance of behalf of aged individuals." Under the Aid to the Blind (AB) and Aid to the Permanently and Totally Disabled (APTD) programs, grants are likewise authorized to "needy individuals" in each category. The statute authorizing grants for Aid to Families with Dependent Children (AFDC) provides that it is "for the purpose of encouraging the care of dependent children in their own home."

Under each category provisions have been made for the states to implement the programs by submitting plans and matching funds. If the state elects to participate in one or all of the programs, the federal government supplies part of the monetary requirements after the state

[1] Old Age Assistance (OAA) 42 U.S.C. Sec. 301, Aid to Families with Dependent Children (AFDC) Sec. 601, Aid to the Blind (AB) Sec. 1201, Aid for the Permanently and Totally Disabled (APTD), Sec. 1351.

plan has been approved by the Secretary of Health, Education and Welfare. There is no mandatory requirement that such a program be established, or once established, that it be continued.

The Texas Constitution originally prohibited any welfare grants,[2] and this provision has been retained as Section 51 of Article III of the Constitution from the date of its adoption in 1876 to the present time. Provision for payment of grants to individuals has been made by amendments to the Constitution in the form of exceptions to the prohibition.

In 1935 section 51b of Article III was added so as to authorize Old Age Assistance to "actual bona fide citizens of Texas who are over the age of sixty-five (65) years . . ."

This amendment was followed in 1937 by the adoption of 51-c to provide assistance to the needy blind and by adoption of Section 51-d which grants assistance "to destitute children under the age of fourteen years."

In 1945 Sections 51-b, c, and d were consolidated into Section 51-a of Article III. In 1956 Section 51-b-1 was adopted providing Aid to the Permanently and Totally Disabled.

These amendments as well as others adopted for needy persons provided for maximum grants in each of the various categories and set a dollar ceiling on the amount that could be paid for all welfare programs out of state funds. From time to time the maximums and the ceiling were increased.

An amendment, adopted in 1963, combined Sections 51-a and 51-b-1 into Section 51-a and raised the ceiling for all programs from $52,000,000.00 to $60,000,000.00.

In 1965 Section 51-a was again amended to provide medical assistance in addition to grants to the four categories. The $60,000,000.00 ceiling was retained, but no maximums were set.

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[2] Section 51 of Article III provided that the Legislature ". . . shall have no power to make any grant or authorize the making of any grant of public moneys to any individual,—whatsoever."

In 1968, an amendment proposed to raise the ceiling from $60,000,000.00 to $75,000,000.00 was defeated by the voters of Texas.

Under the present Constitutional provision the amount to be appropriated for each category is left to the Legislature. In House Bill No. 5, 60th Legislature, First Called Session, the Legislature appropriated $48,000,000.00 for Old Age Assistance, $1,400,000.00 for the Needy Blind, $4,250,000.00 for the Permanently and Totally Disabled and $6,150,000.00 for Families with Dependent Children.

II.

ISSUES

We now turn to the issues.

The issues presented are:

1. Is the payment of only 50% of unmet budgetary needs to recipients of AFDC in contrast to the payment of 95% to 100% of need to other welfare recipients violative of the Equal Protection clause of the Fourteenth Amendment?

2. Is the payment of a lesser percentage to AFDC recipients vis-a-vis other welfare recipients the result of racial or ethnic prejudice and violative of federal civil rights enactments or the Equal Protection clause?

3. Does the present AFDC plan in Texas violate the requirements of § 402(a)(23) of the Social Security Act?

III.

EQUAL PROTECTION

A. *NEEDS*

We first consider whether the payment of only 50% of unmet budgetary needs to recipients of AFDC in contrast to the payment of 95% or more of need to other welfare recipients is violative of the equal protection clause of the Fourteenth Amendment.

In determining grants for needy persons, the Texas Department of Public Welfare sets a "Standard Budgetary Allowance" schedule providing like amounts in all

categories for personal needs such as housing, utilities, laundry, etc. There may be differences in such allowances when differences in need exist (e.g., different amounts for housing as per the size of the family, special allowance for maintenance of seeing eye dogs, etc.), but it is not contended by plaintiffs that there is discrimination in the computation of the budgetary allowance. It is contended, however, that AFDC recipients are the victims of discrimination in receiving only 50% of their computable needs.[3]

We begin with the observation that needy persons cannot claim monetary relief as a vested right. In the case of *Sweeny* v. *State Board of Public Assistance*, 36 F. Supp. 171 (M.D. Pa. 1940), *affirmed*, 119 F.2d 1023, 3 Cir. 1941, *cert. denied*, 314 U.S. 611, the Court stated:

> "Relief or public assistance is not a vested property right held by any person or group of persons. Russell v. City of Providence, 7 R.I. 566. It is a gratuity from the state made to those whose status and condition measured by standards promulgated by the State Board of Public Assistance show an urgent need for financial aid . . . ."

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[3] As an example plaintiff develops a table comparing an OAA recipient with one minor child to an AFDC recipient with one minor child.

	OAA	AFDC	
Adult's Personal Needs	$ 65.00	$ 65.00	
Child's Personal Needs	25.00	25.00	
Housing	42.00	42.00	
Total allowable needs	$132.00	$132.00	
50% Reduction application to AFDC only		66.00	
	$132.00	$ 66.00	
Outside Income (Social Security deducted with $5.00 credit)	45.00	50.00	(child support deducted)
TOTAL PAYABLE BENEFITS	$ 87.00	$ 16.00	

Plaintiffs do not dispute this proposition. They do contend, however, that once Texas has undertaken to provide assistance, it cannot discriminate between recipients in the various welfare categories. Plaintiffs argue that there is but one welfare program with the one purpose of giving assistance to the needy. Paying only 50% of unmet budgetary needs to AFDC recipients, while paying 95% to 100% to other recipients is, according to plaintiffs, an invidious discrimination violative of the Equal Protection clause of the Fourteenth Amendment. We must disagree.

If one looks only at the amount of the grants provided for in each welfare category, there does appear to be discrimination against AFDC recipients, but the size of grants alone is not decisive of the constitutional questions before us. The critical question is not whether differences in grants exist, but whether such differences are irrational under the circumstances and therefore constitutionally impermissible. To answer this question, we must look to the structure and purposes of the Social Security Act and its various programs.

Plaintiffs contend that the only purpose of public welfare is the satisfaction of financial need. While this certainly is one of its purposes, the various programs established under the Social Security Act clearly indicate that other more diverse purposes are also present. It is these additional purposes which justify in large measure the difference in financial assistance accorded recipients in the various welfare programs. Under this view, the difference in grants between programs merely reflects the fact that disparate purposes call for dissimilar solutions.

By way of illustration we note a significant difference in emphasis between the three non-AFDC programs and Aid to Families with Dependent Children. In the non-AFDC programs, the emphasis is primarily on the creation and the retention of the ability for self-care. Thus the OAA program furnishes financial assistance for "rehabilitation and other services to help individuals . . . attain or retain capability for self-care . . ." 42 U.S.C.A. § 301. Similar provisions appear in 42 U.S.C.A. § 1201

and § 1351 establishing the AB and APTD programs respectively. AFDC, on the other hand, is designed primarily to maintain and strengthen family life. 42 U.S.C.A. § 601 thus provides assistance:

> "For the purpose of encouraging the care of dependent children in their own home or in the home of relatives by enabling each State to furnish financial assistance and rehabilitation and other services - - - to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen the family life and to help such parents or relatives to attain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection - - -."

In the recent case of *Lampton* v. *Bonin*, No. 68-2092, E.D. La. April 15, 1969, —— F.Supp. ——, the Court was faced with the same issues as here. In disposing of the argument that the four programs are in conception and purpose but one program, the Court said:

> "The primary purpose of ADC [AFDC] appropriations, unlike appropriations for the other three categories, is not simply to enable the states to furnish assistance to needy children. True, these funds are to be used for this purpose, but the enabling of states to furnish assistance to needy children is only a means to the real primary purpose; "the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives . . . to help maintain and strengthen family life . . ." It is not enough that dependent children be given simply financial assistance; the chief purpose of the Social Security Act section on dependent children is to see that such children are raised by their parents or relatives in a family atmosphere. Plaintiffs point out that in 1935, when the Social Security Act was enacted, the primary statutory purpose of ADC [AFDC] was simply to enable states to furnish financial assistance to needy children. But we must consider the Social Security

Act as it exists today, not as it was written thirty-four years ago.

Furthermore, we cannot agree with plaintiffs that the four categories of public assistance found in the Social Security Act "are in conception, purpose and operation but one program with four groups of beneficiaries . . . ." Although the four categories may have some common provisions and objectives, each category is embodied in a separate title of the Social Security Act. Each of these titles is different from the others. Each title calls for a state plan for one category only, which state plan is to be independent of the plans under the other titles. A state plan for each category must be approved by the Secretary of Health, Education and Welfare if it meets the requirements of its title. Section 404(a) of the Social Security Act, 42 U.S.C. § 604(a) provides that if the Secretary disapproves of a state plan on the Aid to Families with Dependent Children program, he must withhold federal payments to the state for that category or limit payments to parts of that particular state plan not affected by the disapproval. There is nothing in Section 404(a) which would authorize the consequences of nonconformity of this plan to be applied to any other plan.

Even more damaging to plaintiffs' argument was the enactment of Title XVI of the Social Security Act, 42 U.S.C. § 1381-1385, in 1962. Up until that time it was impossible to have a common plan for any of the four categories. But when Congress enacted Title XVI, which authorized states, at their option, to have a single plan for public assistance to the aged, blind, and disabled, in lieu of the three separate plans under Titles I, X, XIV, the titles dealing with aid to these individuals. But it is most significant that while Congress considered the three adult categories similar enough to permit the states to adopt a common plan for them, it did not include Aid to Dependent Children in Title XVI, so that states must still keep the ADC [AFDC] plan and

program separate, even if they combine the other three categories into one plan."

We are of the opinion that each of the titles of the Social Security Act dealing with the four categories here involved stands alone. The State may exercise its powers independently for each of the programs and have different levels of payment for each program without running afoul of the Fourteenth Amendment. This conclusion is not affected by the fact that Texas, in establishing standards of need, has defined the needs of the recipients in the four welfare categories as the same. Plaintiffs argue, in effect, that whatever differences may have existed between the needs of recipients in the various categories has been obliterated by this legislative action. The problem with this argument is that an identity of needs does not obscure the differences in the purposes and functions of the various programs. Welfare programs do not all tend toward the same social objective. Self-help for the aged, blind and disabled may indeed pose a more pressing social problem than strengthening family life among recipients of AFDC. This question is for the Legislature. Differing purposes beget dissimilar remedies. There remain priorities in time and functions in alleviating human misery. Unless the Constitution mandates that all human needs be met, we must accept classifications and piecemeal solutions which are not egalitarian between all programs and all human beings.

For the foregoing reasons we hold that the payment of only 50% of unmet budgetary needs to recipients of AFDC as against 95% to 100% of need to other welfare recipients is not violative of the Equal Protection clause of the Fourteenth Amendment. As said in *Morey* v. *Doud*, 354 U.S. 457 (1957):

> "'1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and voids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reason-

able basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79, 31 S. Ct. 337, 55 L.Ed. 369."

The Texas Legislature was confronted with a ceiling of $60,000,000.00 to be spent for the four categories of public welfare. No more than that amount could be appropriated by the Legislature and it was the duty of the Legislature to use its judgment in the manner and the amount the available money should be divided.

In making the appropriation for the present biennium the Legislature could have considered numerous factors. The purpose, as set out in the Social Security program, for which grants are made to recipients in each category is a primary consideration. Legislators might well have considered the difference in health requirements of the aged, blind and permanently disabled as well as their inability to care for themselves and their unemployability. Of the four groups women with children are most likely to be able to work. Mothers having the care of young children frequently do work and receive no outside assistance. The Legislature might have considered that many mothers could work and would do so with some assistance which would enable them to keep their children in the home, particularly at this time when workers are sorely needed. The Legislature might also have thought they should be encouraged "to attain . . . capability for the maximum selfsupport and personal independence . . . as provided in the Act authorizing the AFDC program."[4]

[4] According to Stipulation 90 about ½ of the caretakers are too uneducated or handicapped to hold even the lowest paid jobs. This fact, however, may not have been know to the Legislators.

Considering the different purposes of programs in the Social Security Act and the differences in the capacity for self-help among recipients in the various categories, we cannot say that the action of the Legislature in providing less assistance for AFDC recipients than for the other recipients of welfare was "without any reasonable basis and therefore . . . purely arbitrary." *Morey* v. *Doud, supra.*

B. *ETHNICITY AND RACE*

Plaintiffs' next contention is that the discrimination against the AFDC recipients vis-a-vis other welfare recipients is the result of racial or ethnic prejudice and is violative of the Equal Protection clause of the Fourteenth Amendment and a violation of the federal civil rights enactments.[5]

Plaintiffs point to past policies in Texas as evidence that the reductions in AFDC benefits were racially discriminatory. Plaintiffs specifically point to the "man in the house" policy prior to the decision in *King* v. *Smith*, 392 U.S. 307 (1968), and the "suitable home" policy designed to exclude children because of their mother's allegedly improper behavior.

As evidence of present discrimination plaintiffs point to the state appropriations for 1968. The OAA program was allocated $48,162,898.76 for 229,654 recipients, while AFDC was allocated $6,149,427.73 for 138,942 recipients, more than 6 times the funds for less than twice the number of the recipients.

The plaintiffs contend that the difference in the appropriations for AFDC and the other groups is violative of the Equal Protection Clause because there is a larger

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[5] 42 U.S.C. sec. 2000-d provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in or denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

percentage of Negroes and Mexicans in AFDC than in the other categories.[6]

Plaintiffs contend that in order to remove the discrimination between categories, recipients of AFDC should receive 95%-100% of unmet needs. They seek to have Section 51-a Article III of the Texas Constitution held unconstitutional because it sets a limit on the amount of funds that the Legislature may expend on the various welfare programs. However, if the provisions of Section 51-a were declared invalid, the entire program of welfare would be destroyed, since this section is the only authorization which the Legislature has to appropriate money for the needy. Should this authorization be declared invalid, then 51-a prohibits the Legislature from making any grant of public moneys to any individual. Apparently under this contention plaintiffs desire this Court to take over the responsibilities of the people to amend the Constitution and of the Legislature to allocate funds. This we do not intend to do.

To remove the alleged diserimination, however, it would not be necessary to pay 100% of unmet needs. It would be necessary only to balance the payments to meet like percentages of need throughout the various categories.

We will therefore address ourselves merely to the question of whether there is discrimination between the va-

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[6] Program	Year	Percentage of Negroes and Mexican Americans	Percentage of White-Anglos	Number of Recipients
OAA	1969	39.8	60.2	230,000
	1968	38.7	61.3	
	1967	37.0	63.0	
APTD	1969	46.9	53.1	
	1968	45.6	54.4	4,213
	1967	46.2	53.8	
AB	1969	55.7	44.3	
	1968	54.9	45.1	14,043
AFDC	1969	87.0	13.0	
	1968	84.9	15.1	136,000
	1967	86.0	14.0	

rious categories based on racial or ethnic prejudice. From an examination of the stipulations we have concluded that the plaintiffs have failed to make a sufficient showing of racial or ethnic discrimination.

We have based our conclusions on the following:

1. There has never been a reduction in the amount of money appropriated by the Legislature to the AFDC program. (Stipulation No. 54).

2. Since 1943 there have been five increases in the amount of money appropriated by the Legislature to the AB and AFDC programs and six increases in the OAA program. (Stipulation Nos. 48 and 49).

3. Since 1959 there have been two increases in the amount of money appropriated by the Legislature to the AFDC program. (Stipulation No. 50).

4. Since 1943 the appropriation by the Legislature to the OAA, AB and AFDC programs have increased by the following percentages:

OAA — 211%
AB — 200%
AFDC — 410%
(Stipulation No. 51).

5. Since 1963 the appropriation by the Legislature to the OAA, AB, AFDC and APTD programs have increased by the following percentages:

OAA — 13%
AB — 0
AFDC — 58%
APTD — 183%
(Stipulation No. 53).

6. The majority of the AFDC families having their grant raised on May 1, 1969, were large families and the large family groups receiving AFDC assistance grants are predominately Negro and Mexican-American. (Stipulations Nos. 38 and 39).

7. In January, 1969, the Legislature authorized the expenditure of an additional $350,000.00 in the AFDC program for the fiscal year ending August 31, 1969. (Stipulation No. 72).

8. The Legislature has submitted a constitutional amendment to be voted on in August, 1969, which would authorize the Legislature to appropriate up to $80,000,000.00 for assistance grants in the OAA, AB, APTD and AFDC programs. If adopted, the present plan is to recommend to the Legislature an increase of $11,900,000.00 in the AFDC program which will then permit AFDC recipients to be paid 100% of unmet need. (Stipulation 75).

9. Under the proposed plan for appropriations, if the amendment is adopted, the AFDC program would receive $11,900,000.00 of the $15,000,000.00 in additional funds available to operate the OAA, AB, APTD and AFDC programs. (Stipulation No. 76).

10. Recipients in the AB program being paid 95% of need are 54.2% Negro and Mexican-American and 44.3% white-Anglo. (Stipulations Nos. 23 and 31).

11. The depositions of Welfare officials conclusively establish that the defendants did not know the racial make-up of the various welfare assistance categories prior to or at the time when the orders here under attack were issued.

Under the foregoing undisputed facts we are of the opinion that plaintiffs have failed to make a sufficient showing of racial or ethnic discrimination to require us to declare void under the Equal Protection clause or under the Civil Rights Act of 1964 either the Legislative Appropriations bill or Section 51-a of Article III of the Texas Constitution.

C. *EQUAL PROTECTION STANDARDS*

Plaintiffs contend that despite the above enumerated considerations, the Texas Welfare program for AFDC recipients must be declared unconstitutional as presently constituted. They argue that any reasons advanced by the state for unequal treatment of recipients in the various programs must be examined not by traditional equal protection standards, but according to the strict scrutiny standard of certain recent Supreme Court pronouncements. Plaintiffs rely on *Shapiro* v. *Thompson*, 37 U.S. L.W. 4333 (April 21, 1969); *Levy* v. *Louisiana*, 391 U.S.

68 (1968); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); and *Carrington* v. *Rash*, 380 U.S. 89 (1965), for the proposition that Texas must show a "compelling state interest" to justify unequal treatment of recipients in the various welfare programs. Absent such a compelling state interest, plaintiffs say the present AFDC allotment is constitutionally insufficient. We cannot agree. Analysis of plaintiffs' cases indicates certain crucial distinctions which make them inapplicable here.

In *Shapiro* v. *Thompson*, *supra*, the Supreme Court struck down a Connecticut welfare requirement which made one year's residence in the state a prerequisite to the receipt of public assistance. In finding a denial of equal protection in such a requirement, the Court found that Connecticut had failed to show a compelling state interest for differentiating between residents and nonresidents. Application of the stricter equal protection standard, however, was clearly based on the Court's determination that the welfare requirement placed a burden on the right to travel. The state statute had to be strictly scrutinized only because it impinged on an independently protected constitutional right. In our case, no independent constitutional right of the plaintiffs has been infringed. Plaintiffs merely rely on the asserted denial of equal protection.

Plaintiffs' other cases are inapplicable for similar reasons. In *Levy* v. *Louisiana*, *supra*, the strict scrutiny standard was applied because "a basic civil right" was involved and because the statute under review was discriminatory on its face. In *Harper* v. *Virginia Board of Elections*, *supra*, and in *Carrington* v. *Rash*, *supra*, the statutes there invalidated placed a burden on the constitutional right to vote. The rationale of these cases is consistent with the rule announced in *Shapiro*, and therefore inapplicable here. The Texas welfare laws before us place no burden on any independent constitutional right of the plaintiffs. As already noted, there is presently no constitutional right to welfare assistance. Welfare "is a gratuity from the state made to those whose status and condition . . . show an urgent need for financial aid. . . ." *Sweeny* v. *State Board of Public Assistance*, *supra*.

States consequently have considerable freedom to determine the levels of welfare assistance. As said recently by the Supreme Court in *King* v. *Smith*, 392 U.S. 309, 318 (1968):

> "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program."

Our view that plaintiffs' claim must be determined by traditional equal protection standards is fortified by the recent Supreme Court decision in *McDonald* v. *Board of Election Com. of Chicago*, 22 L. Ed. 2d 739 (1969). The *McDonald* case involved the right of unsentenced inmates of a Cook County jail to appear personally at the polls in order to vote. Chief Justice Warren, writing for a unanimous court, rejected the argument that the compelling state interest theory was applicable. In so concluding, the Court extensively analyzed the two standards of equal protection. In our view that analysis, which we here reproduce, conclusively demonstrates the inapplicability of the stricter standard to the case at bar:

> "Before confronting appellants' challenge to Illinois' absentee provisions, we must determine initially how stringent a standard to use in evaluating the classifications made thereunder and whether the distinctions must be justified by a compelling state interest; for, appellants assert that we are dealing generally with an alleged infringement of a basic, fundamental right. See, e.g., Reynolds v. Sims, 377 US 533, 12 L Ed 2d 506, 84 S Ct 1362 (1964); Harper v. Virginia State Board of Elections, 383 US 663, 16 L Ed 2d 169, 86 S Ct 1079 (1966). Thus, while the 'States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised,' Lassiter v. Northampton County Board of Elections, 360 US 45, 50, 3 L Ed 2d 1072, 1076, 79 S Ct 985 (1959), we have held that once the States grant the franchise, they must not do so in a discriminatory manner. See

Carrington v. Rash, 380 US 89, 13 L Ed 2d 675, 85 S Ct 775 (1965). More importantly, however, we have held that because of the overriding importance of voting rights, classifications 'which might invade or restrain them must be closely scrutinized and carefully confined' where those rights are asserted under the Equal Protection Clause; Harper v. Virginia State Board of Elections, supra, at 670, 16 L Ed 2d at 174. And a careful examination on our part is especially warranted where lines are drawn on the basis of wealth or race, Harper v. Virginia Board of Elections, supra, two factors which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny. Douglas v. California, 372 US 353, 9 L Ed 2d 811, 83 S Ct 814 (1963); McLaughlin v. Florida, 379 US 184, 192, 13 L Ed 2d 222, 228, 85 S Ct 283 (1964).

"Such an exacting approach is not necessary here, however, for two readily apparent reasons. *First, the distinctions made by Illinois' absentee provisions are not drawn on the basis of wealth or race. Secondly, there is nothing in the record to indicate that the Illinois statutory scheme has an impact on appellants' ability to exercise the fundamental right to vote.* It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. Despite appellants' claim to the contrary, the absentee statute, which are designed to make voting more available to some groups who cannot easily get to the polls, do not themselves deny appellants the exercise of the franchise; nor, indeed, does Illinois' Election Code so operate as a whole, for the State's statutes specifically disenfranchise only those who have been convicted and sentenced, and not those similarly situated to appellants. Ill Rev Stat, c 46, §§ 3-5 (1968). Faced as we are with a constitutional question, we canont lightly assume, with nothing in the record to support such an assumption, that Illinois has in fact precluded appellants from voting. We are then left with the more traditional standards for evaluating appellants' equal protection claims,

Though the wide leeway allowed the States by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto, admits of no settled formula, some basic guidelines have been firmly fixed. The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside *only if no grounds can be conceived to justify them.* See McGowan v. Maryland, 366 US 420, 6 L Ed 2d 393, 81 S Ct 1101 (1961); Kotch v. Board of River Port Pilot Commissioners, 330 US 552, 91 L Ed 1093, 67 S Ct 910 (1947); Lindsley v. Natural Carbonic Gas Co, 220 US 61, 55 L Ed 369, 31 S Ct 337 (1911). With this much discretion, a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' Williamson v. Lee Optical of Oklahoma, Inc., 348 US 483, 489, 99 L Ed 563, 573, 75 S Ct 461 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See Ozan Lumber Co. v. Union County National Bank, 207 US 251, 52 L Ed 195, 28 S Ct 89 (1907)." (Emphasis added)

IV.

SECTION 402(a)(23) OF THE SOCIAL SECURITY ACT

The third issue in this case is whether the present AFDC plan in Texas violates the requirements of § 402 (a)(23) of the Social Security Act, 42 U.S.C. § 602(a)

(23). This section, which was amended on January 2, 1968, provides in pertinent part that

> by July 1, 1969 the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

We do not see how this could mean anything except that the standard of assistance and the maximums imposed must be proportionately raised.

Under the Texas plan in effect on January 2, 1968, there was a maximum on grants paid to recipients of AFDC depending upon the number of children in the family. These maximum limits were as follows:

1 child and caretaker $72.00 per month
2 children and caretaker $93.00 per month
3 children and caretaker $114.00 per month
4 children and caretaker $135.00 per month

Regardless of the number of children in the family $135.00 was the maximum paid. Effective September 1, 1968 there was a cut across the board of $12.00 for each family, so that the maximum regardless of the number of children was $123.00.

On February 28, 1969, Defendants issued a new statewide administrative order known as Executive Letter E-430 and Executive Letter E-434. This order directed that beginning on May 1, 1969, the following changes in Texas welfare procedure were to become effective: 1) the standard of need for AFDC recipients was to be raised 11% to reflect the rise in the cost of living, 2) maximums on AFDC payments were to be removed, and 3) grants were to be calculated by multiplying the newly adjusted standard of need by 50%. The order declared that Texas was unable at the present time to meet any more than 50% of the calculated need of AFDC recipients. Its result was to increase benefits for 14,000 Texas families (the larger families no longer subjected to maximums), decrease benefits for 22,812 families, and totally eliminate

2,470 families from the AFDC rolls. The following is a comparison of the manner in which allowable needs and payable benefits were calculated prior to and after May 1, 1969, when the new plan went into effect. Figures are based on the needs of a family of five, one caretaker and four children:

	Old Plan	New Plan
Adult's personal needs	$ 45.00	$ 65.00
Children's (4) personal needs	84.00	100.00
Housing	44.00	49.00
Special needs	5.00	
Total recognizable needs	$178.00	$214.00
Payable benefits	$123.00	$107.00

As is readily apparent from this table, under the old plan $123.00 was the maximum amount that was paid. Under the present plan, there is a 50% reduction of the total recognizable needs, resulting in a payment of $107.00, or a $16.00 reduction in payments for a family of 4 children. Despite this reduction, HEW has approved the Texas plan as conforming to the requirements of § 402(a)(23). In approving the plan, HEW was acting pursuant to an administrative regulation which interpreted § 402(a)(23) to mean that a state plan for AFDC must:

> ". . . provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted . . . . In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3)(viii) of this paragraph. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards."

After careful examination of the above regulation, and of the Texas plan approved pursuant thereto, we are of the view that neither carries out the intent and purpose of § 402(a)(23). Texas and HEW maintain that the mandate of § 402(a)(23) is satisfied by an increase in the standard of need and a simultaneous reduction in the percentage of need actually paid. They argue, in effect, that the statute is not a command to pay more, but a command to make a bookkeeping entry regarding costs of living increases which would instantly be nullified by the payment of the lesser percentage of the book entry. This is a cipher game. We are of the opinion that Congress intended no such academic exercise. We believe instead that Congress desired to increase the size of grants actually reaching AFDC recipients so as to minimize the effect of the rise in the cost of living. Such an interpretation is more consistent with both the language of the statute and with common sense. As said by Judge Cassibry in *Lampton* v. *Bonin*, —— F. Supp. —— (E.D. La. 1969) (dissenting opinion):

> "ADC [AFDC] payments in all states are predicated upon the need standard; if this standard is increased as section 402(a)(23) requires, the budgetary deficit must also increase accordingly. In those states paying the budgetary deficit in full, as well as in those states that pay only a percentage of the budgetary deficit (or the standard of need) section 402(a)(23) necessarily requires increased ADC [AFDC] grants corresponding to the increase in the standard of need; for a percentage maximum (100 per cent or less), kept constant, automatically translates increased need into an increased payment. Similarly, in those states imposing an arbitrary dollar maximum on the size of the assistance grant, section 402(a)(23) by requiring that the maximums imposed be adjusted in accordance with the change in the cost of living, insures increased grants for all recipients. Regardless of which system of computing ADC [AFDC] payments the state follows, section 402(2)(23) is therefore designed to effectuate increased

> ADC [AFDC] recipient grants. The language of the statute could not be any clearer."

We note that the interpretation of § 402(a)(23) and the Congressional intention behind its enactment have been extensively examined and debated by other courts. *Rosado* v. *Wyman*, —— F.Supp. —— (E.D.N.Y. 1969), *reversed*, —— F.2d —— (2 Cir., July 17, 1969) (dissenting opinion, Feinberg, J.); *Lampton* v. *Bonin*, —— F.Supp. —— (E.D. La., April 15, 1969) (hereinafter referred to Lampton I); *Lampton* v. *Bonin*, —— F.Supp. —— (E.D. La., July — 1969) (hereinafter referred to as Lampton II). In each of these cases judges have disagreed as to the meaning of § 402(a)(23), and have exhaustively analyzed its purpose and derivation. We see no useful purpose in reiterating their arguments here. We find, however, in Judge Cassibry's opinion in *Lampton II* an excellent survey of the arguments for and against our interpretation of the statute and we therefore append it to this opinion. The painstaking analysis of the statute there presented is substantially our own. We deem it appropriate, however, to add a few words to the already extensive pages of this debate.

Judge Wisdom, speaking for the Majority in *Lampton II*, has noted that the legislative history of § 402(a)(23) does not seem to indicate that Congress contemplated a large increase in AFDC payments. He observes, among other things, that insufficient attention was paid by Congress to the fiscal implications of mandating increased payments. From this he concludes: "Clearly, no great cost effect was anticipated".

Respectfully, we must disagree. The difficulty with this analysis is that the operative date of the statute (as opposed to its effective date) is July 1, 1969. When the amendment to the statute was passed on January 2, 1968, there still remained 18 months before any increase in payments would be required. The matter of appropriations, therefore, would, in the normal course of events, come before the Congress in the early calendar months of 1969 and was not ripe for consideration in late 1967. Congress does not normally indulge in fiscal prescience.

In support of his position, Judge Wisdom relies on the Summary of Social Security Amendments of 1967, a Committee Print of a Joint Publication of the Senate and House Committees (90th Cong., 1st Sess., December, 1967). He notes that on page 28 of the print, no cost figures appear for AFDC cost of living increases. He argues that this omission supports his position that no increased payments were contemplated.

We read the table as including only those costs which were reasonably predictable. If Table 5 was to be anticipative of all future expenditures under the Act, we cannot perceive why some figure was not included for those states (an estimated number perhaps) that would raise their payments and not merely their standards. Did this table operate on the premise that all states would play the cipher game? A realistic answer might be that expenditures commencing eighteen or more months later in a field of variables do not furnish a fertile basis for legislative projections and thus such projections were not essayed by the authors of the table.

We find nothing in the legislative history of § 402(2)(23) which precludes the interpretation that this amendment was aimed at increased payments. On the contrary, we find that in terms of its language, purpose, and legislative history, § 402(a)(23) requires that Texas, in order to conform to the statute, must adjust upwards its AFDC payments to fully reflect the 11% rise in the cost of living. The basis for such adjustment is the level of payments on January 2, 1968, with appropriate allowance for the Congressional mandate that "maximums be proportionately adjusted." [7]

V.

CONCLUSION

While we are dismayed at the comparative compassion involved in granting 100% of need to adults and 50%

[7] It should be noted that the Texas Welfare plan in force on January 2, 1968, had AFDC maximums similar to those in other states which have been held unconstitutional. *Williams* v. *Dandridge*, 297 F.Supp. 450 (D. Md. 1969); *Westberry* v. *Fisher*, 297 F.Supp. 1109 (D. Maine, 1969); *Dews* v. *Henry*, 297 F.Supp. 587 (D. Ariz. 1969).

to children, and while we are disconcerted by the apparent insensitivity in being more concerned with self-help for the aged than food and lodging for the young, we cannot say that these indifferent differentiations are so irrational as to be constitutionally impermissible. A rationale for the distinction exists, unbenevolent though it be.

We are also convinced that Congress did not see Section 402(a)(23) as a mirage, but rather signaled a hope that the children would be granted the fact of an increased payment and not the fiction of an increased standard.

For the reasons stated we hold that the present AFDC plan (E-430 and E-434) in Texas violates the requirements established by § 402(a)(23) of the Social Security Act and that defendants should be enjoined from implementing such plan.

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 68-2092

Section "E"

SHIRLEY LAMPTON, ET AL., PLAINTIFFS

versus

GARLAND L. BONIN, ET AL., DEFENDANTS

Before WISDOM, Circuit Judge, and CASSIBRY and COMISKEY, District Judges.

CASSIBRY, District Judge, dissenting:

Waving the banner of "cooperative federalism," with the accent on states' rights, and adopting an interpretation of section 402(a)(23) of the Social Security Act of 1935 that stresses the precise words of the statute to the exclusion of Congress' clear purpose in enacting it; that emasculates the meaning of the statute to the extent that it is rendered an absurdity, a nonentity, a futile exercise of the legislative will; and, most significantly, that ignores the urgent need for increased assistance payments which Congress sought to meet, this court casts aside plaintiffs' contention that section 402(a)(23) requires Louisiana to increase ADC grants. I must dissent.

The question for the court is what Congress meant when it added section 402(a)(23) to the Social Security Act, 42 U.S.C.A. § 602(a)(23) (Supp. 1969), which requires that any state plan for Aid to Dependent Children (ADC) must:

> provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any

maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

In my dissenting opinion in *Lampton* v. *Bonin*, —— F. Supp. ——, —— (E. D. La. 1969) (hereinafter referred to as *Lampton I*), I found it necessary to consider this question and, after reviewing the language of the statute and the legislative history, concluded that Congress intended to require the states to increase ADC payments by the change in the cost of living since the existing level of payments was established. Nothing the majority say has made me change my mind; in fact, their inability to provide the statute some reasonable meaning only enhances my belief in the correctness of my original interpretation of the statute, not to mention its acceptance and refinement by Judge Weinstein in *Rosado* v. *Wyman*,[1] —— F. Supp. —— (E.D.N.Y. 1969), and the subsequent adherence of the three-judge district court in *Jefferson* v. *Hackney*, —— F. Supp. —— (N.D. Texas 1969). But before restating the position taken in my previous dissent, I should first like to delineate the errors inherent in the majority's analysis of section 402(a)(23), and dispel any notion that Congress primarily meant what the majority purport to find in the statute.

I. *SUGGESTED EFFECTS OF SECTION 402(a)(23)*

The majority contend that section 402(a)(23) is not meaningless, and has three possible effects apart from the increased payments contended for by plaintiffs.

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[1] June 6, 1969, the Court of Appeals for the Second Circuit, in a 2-1 decision, stayed the District Court's preliminary injunction restraining New York's Commissioner of Social Services from implementing and putting into effect reductions in ADC payments pending disposition of an appeal from Judge Weinstein's decision. June 23, 1969, the Supreme Court denied a writ of certiorari before judgment. 37 U.S.L.W. 3492. Inasmuch as jurisdictional questions complicate *Rosado*, the grounds for the stay are uncertain, and until publication of a written opinion, its issuance cannot be viewed as having any reflection on the merits.

A. *Increase the Standard of Need*

One such effect is to increase the standard of need by the change in the cost of living so as to make additional persons (those with marginal incomes) eligible for ADC payments and concomitant social welfare services. This is certainly a laudable objective, well within the power of Congress, obviously an incidental side effect of section 402(a)(23), but cannot be what Congress principally had in mind when it enacted this particular amendment. This is amply evidenced by the majority's unsuccessful attempt to find support in the legislative history for some indication that Congress intended expanded eligibility as the purpose of the statute.

In support of this contention, the majority rely upon the other provisions enacted along with section 402(a)(23), and argue that inasmuch as these were meant to provide ancillary services in order to strengthen family life, section 402(a)(23) must do likewise. From this the majority conclude, without giving due consideration to the independent legislative history of section 402(a)(23), that Congress intended section 402(a)(23) "to make additional persons eligible for AFDC payments as well as for concomitant services." This argument must be rejected.

Section 402(a)(23) has a legislative history of its own, separate and apart from that of other provisions of the 1967 Social Security Amendments, and so long as its purpose, as revealed by this history, is not inconsistent with the other provisions and in need of reconciliation therewith, it must be judged alone. Further, because section 402(a)(23) includes numerous unrelated ADC program requirements which states must fulfill if they are to be entitled to receive federal financial assistance, no basis exists for limiting the scope or intent of one such requirement by another unless they are in potential conflict with or overlap each other, which has clearly not been shown to be the case here.

In discussing the legislative history in order to find support for their position, the majority fail to consider that Congress enacted at the same time as section 402(a)(23), and in the very same bill, a limitation on federal

matching funds,[1a] only recently repealed, whose intended effect was to induce the states to tighten their eligibility standards and reduce the number of individuals receiving ADC payments—the exact opposite of the intent which the majority seek to attribute to Congress by its passage of section 402(a)(23). *See Lampton I, supra* at —, note 19; H. Rep. No. 544, 90th Cong., 1st Sess., at 110 (1967). Are we to assume, then, as the majority would have it, that Congress engaged in a tug-of-war with itself? Or are we to conclude, as is certainly more reasonable, that Congress did not legislate section 402(a)(23) in order to expand eligibility for ADC?

Finally, by suggesting that increased eligibility was one of Congress' primary concerns when it enacted section 402(a)(23), the majority go beyond the position maintained by HEW in support of the defendants' position. For although HEW initially propounded this argument in its brief amicus curiae filed in connection with *Lampton I*, it was later dropped from its brief submitted in *Jefferson* v. *Hackney*, *supra*, and for the very good reason that Texas, following HEW's interpretation of the statute in 45 C.F.R. § 233.20(a)(ii), 34 Fed. Reg. 1394 (1969), applied its ratable reduction to the standard of need, rather than the budgetary deficit as in Louisiana, and thus reduced the number of persons eligible for ADC grants. That Louisiana chose to follow a different procedure, thus spreading its limited funds among a greater number of needy families, is of course immaterial to discerning Congress' intent regarding section 402(a)(23). What is material is that a state, consistent with this provision, may if it chooses, reduce the number of persons eligible for ADC payments.

In sum, we must conclude that while an increase in the standard of need would in most cases lead to an increase in the number of persons eligible to participate in the ADC program, this was not the sole or principal intent of Congress when it enacted section 402(a)(23).

[1a] *See* section 208(b) of the 1967 Social Security Amendments, which added section 603(d)(1) of the Social Security Act, 42 U.S.C.A. § 603(d)(1) (Supp. 1969). *See also* Pub. L. 90-364, 90 Stat. 273 (1968), which delayed the effective date of the limitation until July 1, 1969.

B. *Elimination of Maximums*

As a second intended effect of section 402(a)(23), the majority suggest that Congress hoped to induce the states to eliminate the use of arbitrary dollar maximums restricting the size of assistance grants and to substitute other, more equitable forms of holding down welfare expenditures which effect all families proportionately, such as a ratable reduction system. To effectuate this purpose, the majority say Congress required in section 402(a)(23) that dollar maximums be increased proportionately to the change in living costs. Thus, according to their logic, a state is confronted with the choice of either increasing its maximums, and hence its payments, or abandoning its maximums and shifting to a system of ratable reductions.

No legislative history is cited in support of this proposition, because none exists. At no time during consideration and passage of the 1967 Amendments did Congress ever express any interest in doing away with maximums, not even those discriminating against large families, which are the most objectionable, and have since been declared unconstitutional by several federal courts. *See Westberry* v. *Fisher*, 297 F. Supp. 1109 (D. Me. 1969); *Davis* v. *Henry*, 297 F. Supp. 587 (D. Ariz. 1969); *Williams* v. *Dandridge*, 297 F. Supp. 450 (D. Md. 1968). Moreover, if Congress did wish to encourage the states to eliminate maximums, we must seriously question whether it would "have so beclouded its intent" by being so subtle in method, *Lampton I*, *supra* at —.

Finally, by combining *two unrelated* objectives—expanding eligibility and eliminating maximums—in one amendment to section 402(a)(23), the majority's position is necessarily inconsistent with the internal structure of that provision, which consists of over twenty *single-purpose* state plan requirements.

Clearly, then, lacking any support in the legislative history or the structure of the pertinent section of the Social Security Act, this second proposed purpose cannot be said to have been what Congress had in mind when it legislated section 402(a)(23).

* * * *

Before passing to the third and final effect of the statute advanced by the majority, I feel compelled to comment at this time upon my brethren's "credit[ing the Louisiana Department of Public Welfare] with having eliminated its maximums because of serious doubt as to their validity and not as a backhanded way of avoiding the necessity of increasing the maximums (payments) to reflect the rise in cost of living." Such praise is inappropriate.

At least since October 1968 it has been public knowledge that Louisiana was having difficulty financing its ADC program. This lawsuit as initially brought manifested that problem. But an unexpected windfall in June 1969 of federal funds enabled the state to maintain its level of ADC payments for the remainder of that fiscal year. With no such windfall now in sight, and with an appropriation for ADC for the current fiscal year 1969-1970 of only $9,043,000 out of a requested $17,320,000, over $400,000 less than the appropriation for the year before, Louisiana, as both the written interrogatories and oral testimony reveal, had to reduce ADC grants by approximately twelve percent.

In order for the state to make this cut and still comply with requirements of the Social Security Act as interpreted by HEW and now by this court, a ratable reduction system was adopted. Consistant with this change, *all* maximums were eliminated as no longer necessary, not just the "family maximum," which treats families with six or more dependent children less favorable than families with a lesser number of dependent children, and which is the only kind of maximum yet attacked by the courts.

To praise Louisiana's action as respect for an impending constitutional mandate, and thus place a constitutional rather than a political imprint upon the act, is therefore not only to belie the scope of the mandate itself, which is limited to family maximums, but also to disregard what has been readily apparent for months, that Louisiana must somehow reduce its ADC outlays.

C. *Emphasize Disparity Between Need and Payment*

For Congress' third possible purpose in enacting section 402(a)(23), the majority indicate that if this provision "does nothing else, it spotlights the difference between the amount a state has determined to be the need of its dependent children and the amount its legislature has appropriated to meet the need along with federal funds."

In response no more need be said than to ask: Were this provision in fact meant to be so ineffectual as to the states, why were they given *eighteen* months in which to implement it, and why did the Senate-House Conference Committee find it so important to delete the requirement that the cost of living adjustment be made annually? *See* Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 3179, 3209 (1967).

* * * *

If the aforementioned three purposes for Congress' enactment of section 402(a)(23) constitute the most forceful attempt possible to give meaning to the statute apart from that for which plaintiffs contend, this effort itself calls into question the viability of the majority's interpretation of the statute. Also indicative of the unreasonableness of their position are the plain meaning of the language of section 402(a)(23) and the clear course of its legislative history, to which the discussion now turns.

II. *MEANING AND INTENT OF SECTION 402(a)(23)*

A. *Plain Meaning*

In presenting the question for decision, my brethren misconceive the statute by dividing it into two separate and independent Congressional mandates, notwithstanding Congress' consideration and enactment of the provision as a unified whole.[2] As they see it, the issue before the court

[2] The majority quote the text of section 402(a)(23) in this manner.

> "A state plan for aid and services to needy families with children must . . . provide that by July 1, 1969, [1] the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since

is "whether the *second clause* of section 402(a)(23) * * * prohibits the State from decreasing its ADC payments to reflect fully the changes in living costs * * *." (Emphasis added.)

Obviously, this seriously misconstrues the statute and misstates the issue, for we are not deciding the effect of solely the first clause or solely the second clause of section 402(a)(23), but the effect of the statute *as a whole.* And when read as a unified provision, as Congress must certainly have intended—it would not have joined in one amendment such disparate elements as the standard of need and maximums if they were not to be related to a single purpose—it is clear that section 402(a)(23) requires the states to increase the level of ADC payments.

The logic of this position is simple, and requires only a basic understanding of the procedures outlined in the margin which the states use to determine the appropriate amount of ADC recipient grants.[3]

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such amounts were established, [2] any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

It must be noted, however, that it is they, not Congress, who inserted the numbers dividing into two separate parts the compound sentence comprising the statute.

[3] "Each state estimates its standard of need or assistance, which is the minimum monthly amounts required by its needy citizens for food, clothing, shelter, and other necessities. From this low-income budget, which varies according to the size of the family and is different in different states, each state deducts the income of the recipient, subject to allowable exemptions, leaving what is know as a budgetary deficit. In theory the budgetary deficit is the amount of the assistance payment, but in practice many states pay less by imposing arbitrary dollar maximums on the amount of aid paid, by paying only a fixed percentage of the budgetary deficit, or by a combination of both whereby a fixed percentage is paid but only up to a set dollar maximum. Of the fifty-four jurisdictions participating in the ADC program, twenty-four impose neither a percentage nor a dollar maximum, and pay the full budgetary deficit or 100 percent of need. Seven jurisdictions pay a percentage of the budgetary deficit, while four follow a variant and pay a percentage of the standard of need. Finally, twenty-six jurisdictions, including some which impose percentage reductions, place a legal or administrative dollar maximum on the amount that can be paid.

Since we all agree that section 402(a)(23) requires an increase in the standard of need commensurate with the change in the cost of living,[4]

> "[t]o determine the purpose served by this mandate * * *, we need only refer to the universal use of the standard of need as the base for computing the level of ADC recipient grants, and the remaining language of section 402(a)(23), which provides that along with the necessary cost of living changes in need standards, "any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." ADC payments in all states are predicated upon the need standard; if this standard is increased, as section 402(a)(23) requires, the budgetary deficit must also increase accordingly. In those states paying the budgetary deficit in full, as well as in those states that pay only a percentage of the budgetary deficit (or the standard of need), section 402(a)(23) necessarily requires increased ADC grants corresponding to the increase in the standard of need; for a percentage maximum (100 percent or less), kept constant, automatically translates increased need into an in-

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Amounts are stipulated for each additional child, sometimes up to a family maximum expressed in a dollar amount, or cumulative amounts based on a given number of children are used, limited in terms of the number of children or a maximum payment." *Lampton I, supra* at —— (footnotes omitted).

[4] The majority are mistaken when they say: "We all also agree that the State may give less than 100 percent of the standard of need." This was certainly true before enactment of section 402(a)(23) on January 2, 1968, and may well have been true before the July 1, 1969, deadline for compliance (compare the two opinions in *Lampton I*), but is now no longer the case. As will be shown *infra* at ——, those states paying full need (100 percent of the standard of need) on January 2, 1968, even if the ultimate payment was restricted by an arbitrary maximum as in Louisiana, must continue to do so or else violate section 402(a)(23). Only those states which previously provided less than 100 percent of need by way of a percentage reduction system may today pay less than 100 percent of need, but the percentage paid must not of course be reduced below that in existence on January 2, 1968.

> creased payment. Similarly, in those states imposing an arbitrary dollar maximum on the size of the assistance grant, section 402(a)(23), by requiring that the maximums imposed be adjusted in accordance with the change in the cost of living, insures increased grants for all recipients. Regardless of which system of computing ADC payments the state follows, section 402(a)(23) is therefore designed to effectuate increased ADC recipient grants. The language of the statute could not be any clearer." *Lampton I, supra* at —.

This, I submit, is the most reasonable way to read the statute, and the only analysis which respects both the language used and the intent expressed.

B. *Legislative History*

Should any doubts remain regarding the propriety of this interpretation, they are certainly dispelled by the clear course of the legislative history, as surveyed in the following excerpt from my dissenting opinion in *Lampton I, supra* at — (all footnotes have been renumbered):

> "Section 402(a)(23) had its genesis before the Senate Committee on Finance as a proposed amendment by HEW to H. R. 12080, 90th Cong., 1st Sess. (1967), the Social Security Amendments as passed by the House of Representatives. The amendment called for the states to meet need in full as they determined it, and required that the states update their need standards to reflect current prices, and review these standards annually and modify them in accordance with significant changes occurring in the cost of living.[5] *Hearings on H. R. 12080 Before the Sen-*

[5] The text of the proposed amendment follows:

> "[each state plan must provide] (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded, or set aside for future needs, under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of individuals eligible to receive aid to families with dependent children (and such standards shall be no lower than the stand-

ate Committee on Finance, 90th Cong., 1st Sess., pt. 1, at 635 (1967) [hereinafter *Hearings*]. Like provisions were suggested for the adult categorical assistance programs.[6] *Hearings*, pt. 1, at 634-37. These amendments were designed to meet the problem of inadequate and unrealistic assistance payments by compelling increases in the level of payments in all categories.[7]

Although the Committee extensively modified the far-reaching HEW proposals, the provisions reported out and adopted by the Senate, which were discussed in the Section-by-Section Analysis contained in the Senate Report under the heading "Increasing Income of Recipients of Public Assistance," were doubtless intended to ameliorate, though to a lesser degree, the same problem—the low level of assistance grants—in the same manner—requiring the states to increase payments. S. Rep. No. 744, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 2834, 3132 (1967).

The Committee bill rejected the HEW recommendation that the states meet needs in full as they de-

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ards for determining need in effect on January 1, 1967) and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for updating such standards to take into account changes in living costs;".

Hearings on H. R. 12080 Before the Senate Comm. on Finance, 90th Cong., 1st Sess. pt. 1, at 635 (1967).

[6] These programs are: Old Age Assistance and Medical Assistance for the Aged, 42 U.S.C. §§ 301-306; Aid to the Blind, 42 U.S.C. §§ 1201-1206; Aid to the Permanently and Totally Disabled, 42 U.S.C. §§ 1351-1355; Aid to the Aged, Blind or Disabled or for such Aid and Medical Assistance for the Aged, 42 U.S.C. §§ 1381-1385.

[7] Testifying in support of the proposed additions to the House bill, Secretary of HEW John W. Gardner and Under-Secretary Wilbur J. Cohen documented the inadequacy of assistance payments, especially in the ADC program, and attributed this principally to the states' desire to limit their financial responsibility. Hearings, pt. 1, at 216 (testimony of John W. Gardner); Hearings, pt. 1, at 255-59 (testimony of Wilbur J. Cohen).

termine them. But it did incorporate the annual cost of living adjustment for the ADC program,[8] and substitute in the adult programs a one-time mandatory average increase of $7.50 per month in the amount of assistance,[9] S. Rep. No. 744, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 2834, 3132 (1967), a change designed to assure that all non-ADC recipients would benefit from the increases.[10] The Senate passed these provisions with-

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[8] The Committee provision required a state plan for ADC to provide that:

> "by July 1, 1969, *and at least annually thereafter*, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and that any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." (Emphasis added.)

Except for the emphasized language which was deleted by the Conference Committee, this provision parallels that enacted by Congress.

[9] The Committee provision required that non-ADC plans must:

> "provide that the standards used for determining the need of applicants and recipients for and the extent of such assistance under the plan, and any maximum on the amount of assistance, will have been so modified that an increase in the amount of assistance and other income will not be less than $7.50 per month per individual . . . above such amount of assistance and other income available under the standards and maximum applicable under the plan on December 31, 1966."

[10] Since many of the recipients of aid in the adult categories also receive social security benefits, had the cost of living mechanism been used, the intended increase in assistance payments would have been offset for those individuals who are dual beneficiaries by the increase in social security benefits provided by H. R. 12080. (Social security benefits are considered income and serve to reduce the budgetary deficit, which means a reduced assistance grant.) By assuring each recipient an increase of $7.50 per month in his total amount of assistance and other income, this provision avoids any such offsetting effects. Naturally, this device need not have been employed to assure increased grants in the ADC program, because most ADC recipients do not receive social security benefits. Thus, in this program, the cost of living adjustment proposed by HEW could be retained. S. Rep. No. 744, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 2834, 3006-07 (1967). See also 113

out amendment,[11] and sent the bill to a Senate-House Conference Committee to iron out the differences. In the Conference Committee the mandatory $7.50 increase for the adult categories was replaced by a $7.50 disregard of income provision discretionary with the states. (This allows a state, if it chooses, to disregard $7.50 of income when computing the budgetary deficit. The previous figure was $5.00 per month.) Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 3179, 3208-09 (1967). No similar change was made in the ADC provision; it remained mandatory upon the states. But the Conference Committee did not leave the Senate provision requiring increases unscathed, for the annual cost of living adjustment was deleted, thus leaving only a one-time cost of living adjustment before July 1, 1969. *Id.*

Notwithstanding these Conference Committee modifications, it is manifest that the intendment of the Finance Committee and the Senate survived at least with respect to the ADC provision, and that Congress undoubtedly meant what it said in section 402 (a) (23) when it required the states to raise ADC payments. Clearly the course of the provision from

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Cong. Rec. S 16642 (daily ed. Nov. 16, 1967) (remarks of Senator Ribicoff); 113 Cong. Rec. S. 17036 (daily ed. Nov. 22, 1967) (remarks of Senator Randolph).

[11] Senator McGovern proposed the only amendment to section 402(a)(23). It would have substituted a $4.00 per month per individual increase in ADC payments for the cost of living adjustment in need standards. The announced purpose of the amendment was to raise ADC payments, which are considerably lower than those in the adult programs, by the same percentage (eleven percent) as the $7.50 increase in the adult programs. 113 Cong. Rec. S 16963 (daily ed. Nov. 21, 1967) (remarks of Senator Mansfield, who introduced the amendment on behalf of Senator McGovern). In other words, the amendment was designed to insure that in all states—even those where only marginal increases in the cost of living had occurred—ADC recipients obtained the same guaranteed eleven percent increase in their assistance payments as was provided for the adult recipients. The amendment was rejected. *Id.* at S 16964.

its inception before the Senate Committee on Finance until its final passage by Congress allows no other conclusion.

C. *HEW Regulation*

Both the majority and HEW reject the foregoing analysis of the language and history of section 402(a)(23). They argue that the provision does not require increased ADC payments because Congress has intentionally "left open" a method whereby the states can avoid the ostensible effect of the statute to raise payments. This method is set forth in section 233.20(a)(2)(ii) of the HEW Regulations, 45 C.F.R. § 233.20(a)(2)(ii), 34 Fed. Reg. 1394 (1969). The Regulation requires that a state plan for ADC must:

> provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. *In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions* in accordance with subparagraph (3)(viii) of this paragraph [adjustments must be uniform statewide]. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards. 45 C.F.R. § 233.20(a)(2)(ii), 34 Fed. Reg. 1394 (1969) (emphasis supplied).

In discussing this regulation, I again draw upon my dissent in *Lampton I*,[12] *supra* at —— (all footnotes have been renumbered).

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[12] The considerable bracketed additions are principally necessitated by Louisiana's having applied its percentage reduction to the budgetary deficit rather than to the standard of need. Although

HEW promulgated this regulation on January 28, 1969 to guide the states in their compliance with section 402(a)(23) and to "make it clear that while States must update their standards, if the States do not have the money to pay according to such standards they may make a ratable reduction * * *." 34 Fed. Reg. 1394 (January 29, 1969).[13] By a ratable reduction HEW means that a state may reduce the need standard [or the budgetary deficit] by whatever percentage it chooses, and then compute the level of ADC grants from this reduced basis, which necessarily leads to a lower grant than that resulting from the application of the provisions of section 402(a)(23). For example, states formerly paying 100 percent of need (usually up to an arbitrary maximum) could add the cost of living increase required by section 402(a)(23) to the standard of need (and [eliminate or] adjust their maximums accordingly), and then change and pay a lesser percentage of the increased need [or budgetary deficit], while states paying less than 100 percent of need could make the necessary cost of living adjustment and then pay a still lesser percentage. Thus, while the standard of need and dollar maximums[14] remain at the increased

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this course was not anticipated in my previous dissent, it does not affect the continued viability of my analysis. Whether the percentage reduction be applied to the standard of need or the budgetary deficit, the necessary effect is to decrease what would otherwise have been increased by the cost of living adjustment, and thus reduce the ultimate payment.

[13] The regulation dealing with section 402(a)(23) was first promulgated in the HEW Interim Policy Statement No. 4, 33 Fed. Reg. 10230 (July 17, 1968). In its initial form the regulation simply restated the statutory provision, thus giving no indication that the effect of the statutory command could be avoided by a ratable reduction.

[14] To emphasize that maximums must indeed the proportionately adjusted in relation to the repriced standard of assistance, and that they could not be adjusted and then reduced because of inadequate funds pursuant to section 233.20(a)(8)(viii) of the Regulations, the last sentence was added to the regulation interpreting section 402(a)(23). Thus, if funds were inadequate, ratable re-

levels mandated by Congress, a state, by following the percentage reduction procedure, could avoid in part or obliterate completely the otherwise necessary and inexorable effect of section 402(a)(23) to raise the level of recipient grants.[15]

[Both the majority and HEW contend] that Congress having devoted so little attention to section 402(a)(23), it should be interpreted literally to mean no more than its words themselves provide. Accordingly, since the provision commands adjustment only in the standard of need and dollar maximums, and does not refer to the percentage reductions permitted in the regulation, it should not be read to preclude them.[16] In other words, [they seek] to infer a Congressional sanction of percentage reductions from the failure to mention them in section 402(a)(23). However, because a percentage maximum kept constant automatically transfers the increase in the standard of need into an increased payment, it is not at all surprising that Congress did not refer to percentage reductions in section 402(a)(23); there simply was no need to in order to achieve the desired increases. Therefore, to translate this omission into an implied Congressional sanction of percentage reductions is unwarranted.

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ductions could be made in relation to the standard of assistance only, not in relation to the maximums. Needless to say, the effect on the level of recipient grants is the same; they are reduced. But, according to HEW, the language of section 402(a)(23) permits one and prohibits the other.

[15] The Texas experience is instructive. From paying 100 percent of need for a family of four, up to a dollar maximum of $102.00, the state, in accordance with the HEW regulation, reevaluated the need standards and substituted a percentage maximum of fifty percent. *See* Texas Department of Public Welfare, Office Memorandum E-430 (Feb. 28, 1969) (effective May 1, 1969). A family of four with a typical calculated need of $180.00 will now receive a monthly payment of $90.00. Prior to imposition of the fifty percent maximum, the same family would have received $102.00. * * * [The Texas policy has been declared in violation of section 402(a)(23) in Jefferson v. Hackney, —— F. Supp. —— (N. D. Tex. 1969) (three-judge court).]

[16] [Footnote deleted.]

In addition, I no longer find any reason to restrict the statutory language "any maximums that the State imposes on the amount of aid paid" solely to dollar maximums. (I did so limit the term in my dissent in *Lampton I*, *supra* at —— note 17, but further reflection has convinced me that a broader reading is consistent with the intent of Congress.) As Judge Weinstein has pointed out, "Section 402(a)(23) speaks of 'any maximum,' not just dollar maximums." *Rosado* v. *Wyman*, *supra* at ——. Inasmuch as a percentage reduction system results in a dollar maximum on the amount of aid given, it is also encompassed by the command of section 402(a)(23). The proportionate adjustment is not, however, made in "the number representing the percentage reduction but, rather, the dollar figure resulting from the application of the percentage to a family's need as determined by the State's standard of need." *Rosado* v. *Wyman*, *supra*.

Thus Louisiana, notwithstanding its elimination of dollar maximums, by now paying less than the 100 percent of need it formerly paid, has reduced the dollar figure resulting from the application of the percentage to a family's need, and therefore has reduced its maximums in violation of section 402(a)(23).

> Furthermore, a percentage reduction [in the standard of need or the budgetary deficit] reduces the necessary effect of [an increase in] the standard of need as effectively as a dollar reduction [in the standard of need], which HEW admits "would fly in the face of the statutory requirement [to update the standard of need], and cannot be accepted." By both methods the result is a decreased standard of need [or budgetary deficit] which leads to a decreased assistance payment. Ever mindful that "That which we call a rose, by any other name would smell as sweet," [17] I must therefore conclude that if a dollar reduction in the standard of need is precluded by implication by section 402(a)(23), a percentage reduction [of either the standard of need or the budgetary deficit] likewise is prohibited.

[17] Shakespeare, Romeo and Juliet, Act II, Scene 2.

> Finally, the HEW interpretation of section 402(a)(23) cannot be accepted for it nullifies the effectiveness of the provision, and a court will "not suppose that Congress intended to enact unnecessary statutory amendments," *Uptagrafft* v. *United States*, 315 F.2d 200, 204 (4th Cir. 1963), or presume "that the legislature intended any part of a statute to be without meaning." *General Motors Acceptance Corporation* v. *Whisnant*, 387 F.2d 774, 778 (5th Cir. 1968).
> * * *
> It is clear, therefore, that the HEW regulation permitting a ratable reduction in the standard of need is violative of the controlling federal statute, and consequently is invalid. *King* v. *Smith*, 392 U.S. 309, 333, 88 S.Ct. 2128, 2141 (1968). While I am fully congnizant that the views of an administrative agency should be given due deference when issues of statutory interpretation arise, *Udall* v. *Tallman*, 380 U.S. 1, 16, 85 S. Ct. 792, 801 (1965), "[t]he administrative ruling in this case was no sooner made than challenged. We cannot be certain how far it was determined by the considerations advanced * * * in its defense in this case. It has hardly seasoned or broadened into a settled administrative practice. * * * [And I] do not think it should overweigh the considerations * * * set forth as to the proper construction of the statute." *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 156, 64 S.Ct. 474, 481 (1944)."

imposed by the federal government upon those states voluntarily participating in this federally-funded program, and consequently is invalid.[18]

(Last paragraph omitted).

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[18] "There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid." King v. Smith, 392 U.S. 309, 333, n. 34, 88 S.Ct. 2128, 2141, n. 34 (1963).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

ORDER—Filed August 14, 1969

On the the 7th day of August, 1969, came on for hearing the motion of the Plaintiffs to amend paragraph 5 of the judgment entered in this case on July 1, 1969.

The Plaintiffs and Defendants both appeared by counsel and after consideration of the briefs and argument of counsel it is the opinion of the Court that paragraph 5 should be amended so as to read as follows:

5. Defendants are permanently enjoined from enforcing the Texas Plan E-430 and E-434 providing for payments to recipients of AFDC and are directed, so long as the State has not withdrawn from the program, to formulate and implement a plan which carries out the provisions of 42 U.S.C.A. 402(a)(23).

IT IS SO ORDERED.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

On this the 26th day of September, 1969, came to be considered the motion of Plaintiffs to amend the judgment of this Court of July 1, 1969, as amended August 7, 1969, so as to render said judgment retroactive by enabling all members of the class represented by Plaintiffs to receive all sums of money denied them by the State of Texas from the date such amounts were reduced. After due consideration, Plaintiffs' motion is hereby denied.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

[Caption Omitted]

NOTICE OF APPEAL

Come now Plaintiffs, Ruth J. Jefferson, Emma Gipson, and Jose A. Vasquez on behalf of themselves, their minor children, and all others similarly situated and hereby give notice of their intention to appeal to the United States Supreme Court the Judgment of July 1, 1969 as amended August 14, 1969 and from the Court's Denial of Plaintiffs' Motion to further amend the Judgment so as to allow for retroactive payments dated September 26, 1969.

This Appeal is taken pursuant to 28 U.S.C. 1253.

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Philadelphia, Pennsylvania 19104

By /s/ Douglas R. Larson

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1345, Misc. Decided May 4, 1970

JEFFERSON ET AL.

v.

HACKNEY ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

PER CURIAM.

The motion for leave to proceed *in forma pauperis* is granted. The judgment is vacated and the case is remanded to the United States District Court for the Northern District of Texas for further consideration in light of *Rosado* v. *Wyman*, 397 U. S. 397.

SUPREME COURT OF THE UNITED STATES

No. 1345 Misc. October Term, 1969

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Northern District of Texas for further consideration in light of Rosado v. Wyman, 397 U.S. 397.

May 4, 1970

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL.

v.

BURTON G. HACKNEY, ET AL.

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

JUDGMENT

This action came on for hearing on Defendants' motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed of Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges. That on the 1st day of July, 1969, the Court entered a judgment in the above styled and numbered cause, and thereafter on the 7th day of August, 1969, amended Paragraph V of such judgment. That thereafter, on the 4th day of May, 1970, pursuant to an appeal of the foregoing judgment to the United States Supreme Court, the United States Supreme Court vacated and remanded the judgment in this case so that it could be conformed to the United States Supreme Court's decision in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970, in Cause No. 540, October Term, 1969.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed therein, the argument of counsel and the decision by the United States Supreme Court in the instant proceeding, as well as Rosado, et al. v. Wyman, et al., decided April 6, 1970, it is ORDERED, ADJUDGED and DECREED:

1. That the judgment heretofore entered by this Court on the 1st day of July, 1969, and amended thereafter on the 7th day of August, 1969, is hereby vacated and set aside, and that this judgment be entered in lieu thereof.

2. Defendants' motion to dismiss Ruth Jefferson as a party Plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party Plaintiff.

3. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

4. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

5. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

6. The Defendants herein have adjusted the recognized needs of recipients of the AFDC program administered by the State of Texas to reflect changes in the living costs since such amounts were established. That such action on the part of the Defendants is in compliance with Section 402(a)(23) of the Social Security Act, 42 U.S.C.A. § 402(a)(23).

7. The Texas state-wide plan known as E-434, effective May 1, 1969, which allows the Defendants to pay a percentage of the recognized needs of AFDC recipients is not in conflict with the requirements established by the Congressional Amendment 42 U.S.C.A. 402(a)(23) and is in conformity with the decision of the United

States Supreme Court in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970.

8. The injunctive relief sought by the Plaintiffs is hereby denied.

Dated this 4th day of August, 1970.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

[Caption Omitted]

MOTION TO AMEND JUDGMENT

TO THE HONORABLE IRVING L. GOLDBERG, SARAH T. HUGHES, and W. M. TAYLOR, JR.

For the reasons set forth in the letter accompanying this Motion, Plaintiffs respectfully move the Court to amend and modify, pursuant to Rule 59(e) of F.R.C.P., Paragraphs 7 and 8 of the Judgment in this case, dated August 4, 1970, to read:

(7) The Texas statewide plan known as E-434 and subsequent regulations and interpretive bulletins thereof, are in substantial conflict with the requirements established by the Congressional Amendment 42 U.S.C.A. 402 (a) (23) and is contrary to the decision of the United States Supreme Court in *Rosado, et al* v. *Wyman, et al*, decided on the 6th day of April, 1970, in that it results in a reduction in the number of persons eligible to receive AFDC benefits. This is accomplished by applying the "percentage control factor" to the "total of budgetary allowances" (actual standard need) *before* subtracting "available income" to determine the "deficit of unmet need" (amount of grant). This allows Texas to avoid its requirement to "recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and placing them among those eligible for the care and training provisions . . ." of the Act —— U.S. 25 LED 2d at 456 (1970). See also footnote 13.

The "percentage control factor", while an acceptable method of reducing the actual *level* of benefits paid, must be applied to the unmet budgetary deficit *after* available income, if any, has been subtracted from the standard of ("total of budgetary allowances") in order to insure compliance with 42 U.S.C.A. 402(a)(23) as interpreted by the Supreme Court in *Rosado, supra.*, i.e. "non-compliance with § 402(a) (23) may result in limiting the welfare rolls unduly and thus challenging the matching fed-

eral grants in a way not intended by Congress." *Rosado*, 25 LED 2d 442 at 460.

(8) The State of Texas is hereby enjoined from applying the statewide plan known as E-434 in calculating AFDC grants as long as federal monies are used in making AFDC payments and the effect of this injunction is hereby stayed for 30 days from August 1, 1970, at which time the Defendants shall have submitted to this Court and to Plaintiffs a statewide plan which is in compliance with 42 U.S.C.A. 402(a) (23) and *Rosado*, et al, v. *Wyman*, et al, *supra*.

Dated this 14 day of August, 1970.

Respectfully submitted,

/s/ Ed J. Polk
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* * * *

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Legal Services
[Emblem]
For Those In Need

August 14, 1970

Honorable Irving L. Goldberg
United States Circuit Judge
United States Courthouse
Dallas, Texas 75221

Honorable Sarah T. Hughes
United States District Judge
of the Northern District of Texas
United States Courthouse
Dallas, Texas 75221

Honorable William M. Taylor, Jr.
United States District Judge
of the Northern District of Texas
United States Courthouse
Dallas, Texas 75221

RE: Civil Action No. CA-3-3012-B,
Jefferson v. Hackney, and
Civil Action No. SA-69-CA-76
Davila, et al v. Hackney, et al

Dear Judges Goldberg, Hughes and Taylor:

Enclosed with this letter is a motion requesting the Court to amend and modify, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Paragraphs 7 and 8 of the Judgment in this case entered on August 4, 1970. We wish briefly to outline our reasons for the motion in this letter.

The Texas plan known as E-434 has the effect of making thousands of needy AFDC recipients *totally ineligible* for

AFDC public assistance. This is accomplished by reducing the total needs of a family which has some outside income by the percentage reduction factor *before* subtracting that income from the total needs. This is clearly a device used by Texas to avoid its requirement to "recognize and accept responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions . . ." of the Act Rosado, et al v. Wyman, et al, —— U.S. ——, 25 L.Ed 2d 442 at 456 (1970).

The "percentage control factor", while an acceptable method of reducing the actual *level* of benefits paid, must be applied to the unmet budgetary deficit *after* available income, if any, has been subtracted from the standard of need ("total of budgetary allowances") in order to insure compliance with 42 U.S.C.A. 402(a)(23) as interpreted by the Supreme Court in *Rosado, supra*, i.e., "non-compliance with § 402(a)(23) may result in limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress." *Rosado*, 25 L.Ed 2d, 442 at 460.

Clearly Justice Harlan, in his opinion contemplated the above method of calculating the budgets for those states choosing to use the percentage reduction method. See footnote 13. The method used by the State of Texas is absolutely contrary to the Supreme Court's interpretation of 42 U.S.C.A. 602(a)(23) in that it allows the State to absolutely ignore the existence of thousands of needy Texas families.

Justice Harlan said in the third paragraph of Sec. C. in *Rosado*:

> We think two broad purposes may be ascribed to § 402: First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis. Consistent with this inter-

> pretation of § 402, a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need.

Certainly, Texas is not facing up realistically to the magnitude of the public assistance requirement and laying bare the extent to which their programs fall short of fulfilling actual need, by ignoring the existence of thousands of needy families. Congress did not intend that the States response to 42 U.S.C. 602(a)(23) would be to kick people off the welfare rolls.

The attached tables show the contrast between Texas Plan E-434, and the plan which Plaintiffs feel was contemplated by the Act and required by the Supreme Court.

We respectfully move this Court to modify its judgment accordingly.

Yours very truly,

/s/ Ed J. Polk
ED J. POLK
Attorney at Law

EJP:h

Attachments Enclosed

Program under the supervision of Dallas Legal Services Foundation, Inc., funded by local contributions and a grant to the Dallas County Community Action Committee, Inc., from the Office of Economic Opportunity.

TABLE A

Adult and two (2) children with non-exempt family income of one hundred, twenty-five dollars ($125.00).

TEXAS PLAN E-434

$ 65.00	Adult's Personal Needs
50.00	Children's Personal Needs
42.00	Housing
157.00	TOTAL NEEDS
.75	Percentage Reduction Factor
117.75	Recognized Budgetable Needs
—125.00	Net Family Income
NO GRANT—No Medicaid Benefits	

PLAINTIFFS' PROPOSED PLAN
(COMPLYING WITH *ROSADO V. WYMAN*, 42 USC 602(a)(23) and H.E.W. STATE LETTER NO. 1074)

$ 65.00	Adult's Personal Needs
50.00	Children's Personal Needs
42.00	Housing
157.00	TOTAL NEEDS
—125.00	Net Family Income
32.00	Budget Deficit
.75	Percentage Reduction Factor
$ 24.00	GRANT—Plus Medicaid Benefits

TABLE B

The following table illustrates the disasterous effect on AFDC families whose grants are calculated according to Texas Plan E-434 as compared to Plaintiffs' proposed plan:

Number of Children	Net Family Income	Grant According to Texas Plan E-434[1]	Grant According to Plaintiffs' Proposed Plan[2]
1	$100	$0	$24
1	125	0	5
2	125	0	24
2	150	0	5
3	150	0	24
4	175	0	29
4	200	0	11
5	200	0	29
5	225	0	11
6	200	0	48
6	225	0	29
6	250	0	11
7	225	0	48
7	250	0	29
7	275	0	11
8	250	0	48
8	275	0	29
8	300	0	11
9	275	0	48
9	300	0	29
9	325	0	11
10	275	0	67
10	300	0	48
10	325	0	29
11	300	0	67
11	325	0	48
12	325	0	67

[1] Under the Texas Plan, these families receive no Medicaid Benefits.

[2] Receive Medicaid Benefits.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL.

v.

BURTON G. HACKNEY, ET AL.

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

ORDER OVERRULING MOTION TO AMEND JUDGMENT

On this the 23rd day of September, 1970 came on the motion of Plaintiffs to amend the judgment in the above case. After considering the motion and the briefs of Plaintiffs and Defendants

It is ORDERED, ADJUDGED and DECREED that said motion to amend the judgment be and is hereby overruled.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3012-B

JEFFERSON, ET AL

vs.

HACKNEY, ET AL

NOTICE OF APPEAL

Come now Plaintiffs, Ruth J. Jefferson, Emma Gipson, and Jose A. Vasquez on behalf of themselves, their minor children, and all others similarly situated and hereby give notice of their intention to appeal to the United States Supreme Court the Judgment of August 4, 1970, and from the Court's denial of Plaintiffs' Motion to Amend Judgment as to methods of computation of AFDC grants dated September 24, 1970.

This Appeal is taken pursuant to 28 U.S.C. 1253.

/s/ Ed J. Polk
ED J. POLK
Dallas Legal Services
Foundation, Inc.
301 North Market Street
Dallas, Texas 75202

SUPREME COURT OF THE UNITED STATES

No. 70-5064

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

APPEAL from the United States District Court for the Northern District of Texas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 12, 1971

SUPREME COURT OF THE UNITED STATES

No. 70-5064

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

UPON CONSIDERATION of the motion of the appellants for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 12, 1971

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